

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1327
(Representatives Porter, Karls, Louser, Maragos, Owens, Trottier)
(Senators Armstrong, Schaible)

AN ACT to create and enact subsection 3 to section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to amend and reenact subsections 1 and 6 of section 62.1-01-01 and sections 62.1-01-03, 62.1-02-05, 62.1-02-10, 62.1-03-01, 62.1-03-05, and 62.1-04-03 of the North Dakota Century Code, relating to concealed weapons laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 3 to section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

3. a. The bureau of criminal investigation shall conduct a statewide and nationwide criminal history record check for the purpose of determining eligibility for a concealed weapons license for each applicant for an initial license or the renewal of a concealed weapons license under chapter 62.1-04. The nationwide criminal history record check must include an inquiry of the national instant criminal background check system, and if the applicant is not a United States citizen, an immigration alien query.
- b. Each applicant for a concealed weapons license shall provide to the bureau of criminal investigation written consent to conduct the criminal history record check, to maintain, release, and disclose the information in accordance with state and federal law, and to make a determination on the application; two sets of fingerprints from a law enforcement agency or other individual authorized to take fingerprints; and any other information required under chapter 62.1-04. The person who takes fingerprints under this subsection may charge a reasonable fee for fingerprinting.
- c. The bureau of criminal investigation shall resubmit the fingerprints to the federal bureau of investigation. Except as otherwise provided by law, federal bureau of investigation criminal history record information is confidential.

SECTION 2. AMENDMENT. Subsection 1 of section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; ~~any stun gun~~; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses direct contact to deliver voltage for the defense of an individual.

SECTION 3. AMENDMENT. Subsection 6 of section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the

energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes ~~the Thompson contender forty five caliber single shot center fire with a pistol grip or similar firearm~~ all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

SECTION 4. AMENDMENT. Section 62.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

62.1-01-03. Limitation on authority of political subdivision regarding firearms.

~~NeA~~ political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

SECTION 5. AMENDMENT. Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.

1. ~~A person~~An individual who possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings. ~~The term "public gathering" does not apply to a state or federal park.~~
2. This section does not apply to law:
 - a. ~~A law enforcement officers~~officer; ~~members~~
 - b. ~~A member~~ of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; ~~competitors~~
 - c. ~~A competitor~~ participating in an organized sport shooting eventevent; ~~gun and~~
 - d. ~~A gun or antique show~~show; ~~participants~~
 - e. ~~A participant~~ using a blank cartridge ~~firearms~~firearm at a sporting or theatrical eventevent; ~~any firearms~~
 - f. ~~A firearm or dangerous weapon~~ carried in a temporary residence or motor vehicle; ~~students and instructors~~
 - g. ~~A student and an instructor at a hunter safety classes~~class; ~~or private~~
 - h. ~~Private security personnel while on duty.~~In addition, a:
 - i. A state or federal park;
 - j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question; and
 - k. A municipal court judge licensed to practice law in this state, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer are exempt from the prohibition and penalty in subsection 1, if the individual maintains the same level of firearms proficiency as is required by the peace officer

standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

3. This section does not prevent any political subdivision from enacting an ordinance ~~which that~~ is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. ~~Such an~~ An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.

SECTION 6. AMENDMENT. Section 62.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-10. Carrying loaded firearm in vehicle - Penalty - Exceptions.

~~No person~~ An individual may not keep or carry a loaded firearm in or on any motor vehicle in this state. ~~Any person~~ An individual violating this section is guilty of a class B misdemeanor. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.
3. ~~Any person~~ An individual possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the ~~person~~ individual to carry a firearm or dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a firearm or dangerous weapon concealed in that state without obtaining a similar license from that state, except while that ~~person~~ individual is in the field engaged in hunting or trapping activities.
4. ~~Any person~~ An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.
5. A security guard or private investigator properly licensed to carry firearms ~~by the attorney general~~.
6. ~~Any person~~ An individual possessing a valid special permit issued pursuant to section 20.1-02-05.

SECTION 7. AMENDMENT. Section 62.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-03-01. Carrying handgun - Restrictions - Exceptions.

1. ~~AAn unloaded~~ AAn unloaded handgun may be carried by a ~~person~~ an individual not otherwise prohibited from possessing one by section 62.1-02-01 or any other state statute, in a manner not prohibited by section 62.1-02-10 if:
 - a. Between the hours of one hour before sunrise and one hour after sunset, the handgun is ~~carried unloaded and either~~ in plain view or is secured.
 - b. Between the hours of one hour after sunset and one hour before sunrise, the handgun is ~~carried unloaded and~~ secured.
2. The restrictions provided in subdivisions a and b of subsection 1 do not apply to:

- a. ~~Any person~~An individual possessing a valid ~~North Dakota~~ concealed weapons license ~~from this state~~ or a valid license issued by another state authorizing the person to carry a ~~dangerous weapon concealed~~ if that state permits a holder of a valid ~~North Dakota~~ concealed weapons license to carry a ~~dangerous weapon concealed~~ in that state without obtaining a similar license from that state ~~who has reciprocity under section 62.1-04-03.1.~~
- b. ~~Any person~~An individual on that person's land, or in that ~~person's~~individual's permanent or temporary residence, or fixed place of business.
- c. ~~Any person~~An individual while lawfully engaged in target shooting.
- d. ~~Any person~~An individual while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle.
- e. ~~Any person~~An individual permitted by law to possess a ~~handgun~~firearm while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair or back from those locations.
- f. Any North Dakota law enforcement officer.
- g. Any law enforcement officer of any other state or political subdivision ~~thereof~~ of another state if on official duty within this state.
- h. Any armed security guard or investigator as authorized by ~~the attorney general~~law when on duty or going to or from duty.
- i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member.
- j. Any member of the national guard, organized reserves, state defense forces, or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization.
- k. Any officer or employee of the United States duly authorized to carry a handgun.
- l. ~~Any person~~An individual engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of ~~such that person~~such individual possessing, using, or carrying a handgun in the usual or ordinary course of ~~such the~~the business.
- m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

SECTION 8. AMENDMENT. Section 62.1-03-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-03-05. Prohibited alterations in ~~handgun~~to firearms.

~~No~~A person may not change, alter, remove, or obliterate any mark of identification on a ~~handgun~~firearm, ~~such as including~~ the name of the maker, model, or manufacturer's number or knowingly possess a ~~handgun~~firearm on which ~~such these~~ alterations have been made. Possession of any ~~handgun~~firearm upon which any ~~such~~ identification mark has been changed, altered, removed, or obliterated creates a rebuttable presumption that the possessor made the alterations.

SECTION 9. AMENDMENT. Section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

62.1-04-03. License to carry a firearm or dangerous weapon concealed - Class 1 firearm license and class 2 firearm and dangerous weapon license.

1. The director of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the director ~~by a resident or nonresident citizen of the United States~~ if the following criteria are met:
 - a. The applicant is at least twenty-one years of age for a class 1 firearm license or at least eighteen years of age for a class 2 firearm and dangerous weapon license-;
 - b. ~~The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.~~ can demonstrate that the applicant is a resident of this state by providing a copy of a valid driver's license or state-issued identification card from this state that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or the applicant possess a valid driver's license from the applicant's state of residence that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which state has reciprocity with this state under section 62.1-04-03.1;
 - c. The applicant is not a ~~person~~ an individual specified in section 62.1-02-01 and for a class 1 firearm license the applicant:
 - (1) Has not been convicted of a felony;
 - (2) Has not been convicted of a crime of violence;
 - (3) Has not been convicted of an offense involving the use of alcohol within ten years prior to the date of application;
 - (4) Has not been convicted of ~~an~~ a misdemeanor offense involving the unlawful use of narcotics or other controlled substances within ten years prior to the date of application;
 - (5) Has not been convicted of an offense involving moral turpitude;
 - (6) Has not been convicted of an offense involving domestic violence;
 - (7) Has not been adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and
 - (8) Is qualified to purchase and possess a firearm under federal law-;
 - d. ~~The applicant has the written approval for the issuance of a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedure conducted by a certified firearm or dangerous weapon instructor or test administrator. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a firearm or dangerous weapon instructor or test administrator based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation-;~~
 - e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed ~~a background investigation or the criminal history records check conducted by that agency~~ the bureau of criminal investigation and the federal bureau of investigation. ~~To pass a background investigation, an~~ The applicant shall provide all documentation relating to any court-ordered treatment or commitment for

mental health or alcohol or substance abuse ~~or incidents of domestic violence~~. The applicant shall provide the director of the bureau of criminal investigation written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records. The bureau may deny approval for a class 1 firearm license if the bureau has reasonable cause to believe that the applicant or ~~permitholder~~licenseholder has been or is a danger to self or others as demonstrated by evidence, including past pattern of behavior involving unlawful violence or threats of unlawful violence; past participation in incidents involving unlawful violence or threats of unlawful violence; or conviction of a weapons offense. In determining whether the applicant or ~~permitholder~~licenseholder has been or is a danger to self or others, the bureau may inspect expunged records of arrests and convictions of adults and juvenile court records; and

- f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that ~~person's~~individual's control.
2. The attorney general shall offer class 1 firearm and class 2 firearm and dangerous weapon licenses to carry a firearm or dangerous weapon concealed ~~pursuant to~~under the following requirements:
 - a. An applicant for a class 1 firearm license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, complete an open book test based upon a manual, demonstrate familiarity with a firearm ~~or dangerous weapon~~, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm ~~or dangerous weapon~~ to be concealed may be satisfied by one of the following:
 - (1) Certification of familiarity with a firearm ~~or dangerous weapon~~ by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor, ~~or dangerous weapon instructor~~;
 - (2) Evidence of equivalent experience with a firearm ~~or dangerous weapon~~ through participation in an organized shooting competition, law enforcement, or military service, ~~or dangerous weapon course of training~~;
 - (3) Possession of a license from another state to carry a firearm ~~or dangerous weapon~~, concealed or otherwise, which is granted by that state upon completion of a course described in paragraphs 1 and 2; or
 - (4) Evidence that the applicant, during military service, was found to be qualified to operate a firearm ~~or dangerous weapon~~.
 - b. An applicant for a class 2 firearm and dangerous weapon license is required to successfully complete the open book test offered for the class 1 firearm license.
 - c. A North Dakota resident who has a valid class one firearm license also may carry a class two dangerous weapon without any further testing required.
 - d. ~~Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional~~Additional testing is not required. ~~No additional testing is required to renew a class 2 concealed weapons~~firearm and dangerous weapon license. A class 1 firearm license may be renewed upon successful completion of the class 1 firearm requirements within ~~one year~~thirty days before submission of the application for renewal. ~~A license issued under this section before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 requirements and satisfaction of the age requirement.~~

3. The director of the bureau of criminal investigation shall send by mail to a holder of a license a notice of the procedures for renewal of the license issued under this section. The director shall give the notice at least one hundred fifty days but not more than one hundred eighty days before the expiration of the license.
4. ~~The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within forty-fivesixty days of receipt from the forwarding agency of the properly completed application.~~
- 4.5. The license fee for a concealed weapons license is forty-five dollars, which must be credited to the attorney general's operating fund. The license feeAll fees must be paid before the license is issuedapplication may be processed by the director of the bureau of criminal investigation. The attorney general shall list the fees associated with the license, including the costs of the fingerprint-based federal criminal history record check, in the attorney general's administrative rules.
- 5.6. The director of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigationthe criminal history record check and be accompanied by two:
 - a. A photocopy of a valid driver's license or identification card issued by this state which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or a valid state-issued driver's license from the applicant's state of residence which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which has reciprocity with this state under section 62.1-04-03.1; and
 - b. Two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for five years. The original license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate and an electronic copy must be preserved for six years by the director. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. Access to license information must be available to law enforcement through electronic means for official law enforcement purposes. The individualapplicant or licenseholder shall notify the director of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
- 6.7. The director of the bureau of criminal investigation may deny an application or revoke or cancel a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.
- 7.8. The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.

- ~~8.9.~~ Information collected from an applicant under this section is confidential information. However, the information may be disclosed:
- a. To a governmental agency or court for a law enforcement purpose, including the investigation, prosecution, or punishment of a violation of law.
 - b. To a court to aid in a decision concerning sentence, probation, or release pending trial or appeal.
 - c. Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.
- ~~9.10.~~ The attorney general may adopt any rules necessary to ~~carry out~~implement this title.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1327.

House Vote: Yeas 86 Nays 8 Absent 0

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State