

FIREARMS AND WEAPONS PROVISIONS IN TITLE 62.1 - BACKGROUND MEMORANDUM

Section 3 of 2017 House Bill No. 1233 directs a study of the provisions relating to firearms and weapons for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

BACKGROUND

North Dakota Century Code Title 62.1 sets forth the provisions relating to weapons, specifically the possession of weapons, handguns, concealed weapons, machine guns, automatic rifles, silencers, and bombs.

Chapter 62.1-01

Chapter 62.1-01 sets forth the definitions applicable for Title 62.1 and the general provisions requiring the forfeiture of a dangerous weapon or firearm by a person arrested and convicted of a crime.

Section 62.1-01-01

Section 62.1-01-01 provides the definitions applicable for Title 62.1.

Section 62.1-01-02

Section 62.1-01-02 provides for the seizure of any firearm or dangerous weapon used or possessed while in the commission of a felony or misdemeanor involving violence.

Section 62.1-01-03

Section 62.1-01-03 limits the authority of a political subdivision from enacting an 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.

Chapter 62.1-02

Chapter 62.1-02 provides the specific circumstances under which an individual may not possess a firearm and when an individual's right to possess a firearm may be restored.

Section 62.1-02-01

Section 62.1-02-01 sets forth the limitations as to who may not possess a firearm, such as convicted felons and the mentally ill, and the corresponding penalties.

Section 62.1-02-01.1

Section 62.1-02-01.1 provides the process for the restoration of the right to possess a firearm for an individual who is prohibited from possessing a firearm due to a conviction of a felony offense that involved the use of a firearm.

Section 62.1-02-01.2

Section 62.1-02-01.2 authorizes a court to make a determination as to whether the provisions of the federal firearm prohibition laws found in 19 U.S.C. 922 (d)(4) and (g)(4) apply to various court proceedings such as a proceeding to determine if an individual is mentally deficient, to order involuntary commitment or hospitalization to a treatment facility, or the appointment of a guardian. If a court determines an individual is subject to the federal firearm prohibition laws, the individual may petition the court that issued the finding or the district court of a county in which the individual resides to remove the individual's firearms-related disabilities.

Section 62.1-02-02

Section 62.1-02-02 prohibits an individual from selling a handgun to an individual who the seller knows is prohibited from possessing a firearm and provides a violation of this section is a Class A misdemeanor.

Section 62.1-02-03

Section 62.1-02-03 provides a person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a Class C felony. This section does not apply to a law enforcement officer or member of the armed forces or the National Guard who possesses or uses a short-barreled rifle in the course or in connection with the individual's official duties.

Section 62.1-02-04

Section 62.1-02-04 prohibits an individual who enters a liquor establishment or an establishment used as a gaming site where bingo is the primary gaming activity from possessing a firearm or dangerous weapon or using a

device that uses a projectile and voltage or a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident in the part of an establishment that is set aside for the retail sale and consumption of alcoholic beverages. The section provides several exemptions, including law enforcement officers, the proprietor, and the proprietor's employee.

Section 62.1-02-05

Section 62.1-02-05 prohibits the possession of a firearm or dangerous weapon at an athletic or sporting event, a school, a church, and a publicly owned or operated building. The section provides 14 exemptions and allows political subdivisions to enact a less restrictive ordinance. The section also provides a church or place of worship may not be held liable for any injury or death or damage to property caused by an individual permitted to carry a dangerous weapon concealed.

Section 62.1-02-06

Section 62.1-02-06 provides an individual who discharges a firearm within a city is guilty of a Class B misdemeanor unless the individual is a law enforcement officer, a citizen in defense of person or property, or a participant in a lawful activity.

Section 62.1-02-07

Section 62.1-02-07 prohibits any parent, guardian, or other person having custody of any minor under 15 years of age from allowing the minor to use or carry a firearm in public, unless the minor is under the direct supervision of the parent, guardian, or other authorized guardian. A violation is a Class B misdemeanor.

Section 62.1-02-08

Section 62.1-02-08 provides an individual is guilty of an offense if the individual supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited from receiving it if the transferor knows the individual is prohibited from receiving or possessing it.

Section 62.1-02-09

Section 62.1-02-09 prohibits an individual, except for a law enforcement officer on official business, from possessing an explosive or destructive device in a government building without the written consent of the government agency or individual responsible for the management of the building. A violation of this section is a Class C felony.

Section 62.1-02-10

Section 62.1-02-10 prohibits an individual from keeping or carrying a loaded firearm in a motor vehicle, including an off-highway vehicle or snowmobile. A violation of this section is a Class B misdemeanor. This section also sets forth several exceptions, such as a law enforcement officer or an individual engaged in lawful hunting or trapping.

Section 62.1-02-10.1

Section 62.1-02-10.1 provides an individual who is in the field and engaged in the lawful hunting of big or small game and who violates Section 62.1-02-10 is not subject to a criminal penalty, but is guilty of a Class 2 noncriminal offense under the game and fish laws.

Section 62.1-02-11

Section 62.1-02-11 restricts an individual from having an explosive unless the explosive is carried for a lawful and legitimate purpose. An individual who violates this section is guilty of a Class C felony.

Section 62.1-02-13

Section 62.1-02-13 prohibits an employer from restricting a customer, employee, or invitee from possessing any legally owned firearm, if the firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and if the customer, employee, or invitee is lawfully in the area. The section sets forth additional guidelines regarding the possession of secured firearms.

Chapter 62.1-03

Chapter 62.1-03 sets forth specific regulations related to the use and possession of handguns.

Section 62.1-03-01

Section 62.1-03-01 provides an individual may not carry an unloaded handgun in plain view or secured between the hours of one hour before sunrise and one hour after sunset or between the hours of one hour after sunset and one hour before sunrise if the handgun is unloaded and secured. Numerous exceptions to this section are also provided, such as an individual possessing a valid concealed weapons license, an individual on that person's land

or in that individual's permanent or temporary residence or fixed place of business, an individual while lawfully target shooting, any law enforcement officer of any state or political subdivision while on official duty, any member of the armed forces of the United States when on duty, and any officer or employee of the United States authorized to carry a handgun.

Section 62.1-03-02

Section 62.1-03-02 prohibits an individual from providing a minor with a handgun. The section provides an exception if the minor will be using the handgun under the supervision of an adult and for the purpose of firearm safety training, target shooting, or hunting.

Section 62.1-03-03

Section 62.1-03-03 requires a retail dealer licensed to sell handguns to send a copy of the license to the chief of police of the city and the sheriff of the county in which the dealer is licensed.

Section 62.1-03-04

Section 62.1-03-04 prohibits an individual who purchases a gun from giving false information or providing false evidence of the individual's identity.

Section 62.1-03-05

Section 62.1-03-05 prohibits an individual from changing, altering, removing, or obliterating any identification on a firearm.

Section 62.1-03-06

Section 62.1-03-06 provides a violation of any section of Chapter 62.1-03 is guilty of a Class A misdemeanor, unless another penalty is provided.

Chapter 62.1-04

Chapter 62.1-04 sets forth the law relating to carrying a concealed weapon.

Section 62.1-04-01

Section 62.1-04-01 provides the definition of "concealed" and sets forth the types of firearm or dangerous weapon that are not considered "concealed" under the section. For purposes of this chapter a firearm or dangerous weapon is considered "concealed" if it is not secured, and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual. A firearm or dangerous weapon is not considered "concealed" under various instances such as, if the firearm is locked in a closed trunk or luggage compartment of a motor vehicle, carried by a person who is permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not.

Section 62.1-04-02

Section 62.1-04-02 allows an individual who is not otherwise precluded from possessing a Class 2 firearm and dangerous weapon license under Chapter 62.1-04 and who has possessed for at least 1 year a valid driver's license or nondriver identification card issued by the Department of Transportation to carry a firearm concealed.

Section 62.1-04-03

Section 62.1-04-03 provides the procedure for an individual to obtain a Class 1 firearm license or Class 2 firearm and dangerous weapon license. To obtain a concealed firearm or dangerous weapon license an individual must:

1. Be a United States citizen or legal permanent resident alien;
2. Legally be able to possess a firearm or dangerous weapon;
3. Be at least 18 years old for a Class 2 license or at least 21 years old for a Class 1 license;
4. Be a resident of the state or on full-time active military duty in the state or a resident of a state that has reciprocity with North Dakota and who possesses a valid concealed weapon license in their home state;
5. Successfully complete the training requirements; and
6. Pass a criminal background check.

The only difference between a Class 1 and Class 2 license is reciprocity because a Class 1 license requires additional testing requirements; Class 1 license holders have reciprocity in many more states.

Section 62.1-04-03.1

Section 62.1-04-03.1 provides reciprocity to an individual who has a valid license issued by another state to carry a concealed weapon in that state and whose state grants residents of North Dakota the right to carry a concealed firearm or dangerous weapon without requiring a separate license.

Section 62.1-04-04

Section 62.1-04-04 requires an individual who is carrying a concealed firearm or dangerous weapon to have on one's person the license issued by this state or another state or a valid driver's license or nondriver identification card, issued by the Department of Transportation, or a digital image of either card, and to give the card to a law enforcement officer upon demand. The section also requires an individual who is carrying a concealed firearm to inform an officer upon initiation of a traffic stop of the individual's possession of a concealed weapon.

Section 62.1-04-05

Section 62.1-04-05 provides a violation of Chapter 62.1-04 is a Class A misdemeanor.

Chapter 62.1-05

Chapter 62.1-05 relates to the possession and sale of machine guns, automatic rifles, silencers, and bombs.

Section 62.1-05-01

Section 62.1-05-01 prohibits a person from purchasing, selling, or possessing a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases unless the person has complied with the National Firearms Act (26 U.S.C. 5801-5872). A violation of this section is a Class C felony.

Section 62.1-05-02

Section 62.1-05-02 provides exemptions to the restrictions in Chapter 62.1-05 for the authorized agent and a servant of a person who has a license to purchase, sell, have, or possess a machine gun, submachine gun, fully automatic rifle, silencer, or a bomb loaded with explosives or poisonous or dangerous gases, any officer or member of an authorized military organization while on official duty, a North Dakota law enforcement officer, and any federal officer authorized by the federal government to possess the type of weapons prohibited in Chapter 62.1-05.

Section 62.1-05-03

Section 62.1-05-03 provides for chief law enforcement officer certification for the transfer or making of a firearm. Under this section, "certification" means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm. A "chief law enforcement officer" means any official, or the designee of the official, the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identified by regulation as eligible to provide any required certification for the making or transfer of a firearm.

2017 Legislation

In 2017, 13 bills related to firearms were introduced, 8 of which were passed by the Legislative Assembly and signed by the Governor.

Legislation Adopted

- House Bill No. 1169 allows an individual who is not otherwise prohibited from possessing a Class 2 firearm and dangerous weapon license and who has been a resident of the state for at least 1 year to carry a concealed firearm. The bill also allows an individual to show proof of a valid driver's license or nondriver identification card on a mobile device upon demand by a law enforcement officer.
- House Bill No. 1233 adds a federal, magistrate, or judicial referee to the list of individuals who are exempt from Section 62.1-02-05, which prohibits the possession of a firearm at a public gathering. The bill allows an individual who has a Class 2 concealed weapons license to upgrade to a Class 1 concealed weapons license within 5 years from the date the Class 2 license was issued and upon successful completion of the testing required for a Class 1 license. The bill also allows an individual who has a valid Class 1 firearm license to request to convert the license to a Class 2 firearm license before the expiration of the Class 1 firearm license.
- House Bill No. 1273 removes the requirement for a church to notify local law enforcement of any individual the church authorizes to possess a concealed weapon on church property and limits the liability of a church or place of worship for any injury, death, or damage to property caused by an individual permitted to carry a dangerous weapon.
- House Bill No. 1279 allows an individual to store a firearm or dangerous weapon in a building that is owned or managed by the state or a political subdivision if the individual resides in the building, the storage is inside

the residential unit, and the storage of the firearm or dangerous weapon was approved by the state, governing board, or designee.

- House Bill No. 1395 amends the definition of "dangerous weapon" to include a device that uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident. The bill amends the definition of law enforcement officer to include a retired public servant who was authorized by law or a government agency for at least 10 years to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.
- House Bill No. 1402 allows a law enforcement officer to arrest an individual who is subject to a protection order and failed to surrender any firearm or dangerous weapon.
- Senate Bill No. 2097 adds public security personnel to the list of individuals allowed to carry firearms at a public gathering.
- Senate Bill No. 2125 adds a correctional officer who is employed by the Department of Corrections and Rehabilitation or by a correctional facility to the individuals who are allowed to carry firearms at a public gathering.

Failed Legislation

- House Bill No. 1190 would have allowed an individual authorized by the Chief Justice of the Supreme Court, Governor, Speaker of the House, or President Pro Tempore of the Senate to carry a concealed weapon on property owned or leased by the state.
- House Bill No. 1391 would have created an exception from all federal regulations for any firearm, firearm accessory, or ammunition produced or manufactured in the state.
- House Bill No. 1278 would have amended the definition of "government building" for purposes of possession of a firearm to specify a "government building" is a building that limits access by using metal detection devices and is staffed by armed personnel. The bill also would have clarified a public gathering as it relates to possessing a firearm or dangerous weapon includes a government building.
- House Bill No. 1310 would have created a pilot program for first armed responders in schools.
- Senate Bill No. 2139 would have allowed an individual who carries a concealed firearm or dangerous weapon to produce evidence of a valid license to carry a concealed weapon within 10 days of a request by a law enforcement officer.

PROPOSED STUDY APPROACH

The committee may consider inviting the Attorney General, representatives of local law enforcement, prosecutors, defense attorneys, and the Game and Fish Department to provide insight for the purpose of eliminating provisions of Title 62.1 that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in logical order.