

HB 1340

Rep. Ben Koppelman- Testimony

Mr. Chairman and Members of the Committee,

Thank You for the opportunity to introduce HB1340 to you today.

HB 1340 comes to you as a bill seeking to reiterate, for the third and hopefully final time, **that local political subdivisions are not to restrict the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition, PERIOD.**

In 1983, the state legislature passed a limitation on the authority of political subdivisions to regulate guns and ammunition. 1983 NDCC 62-04-06 stated:

“No political subdivision, including home rule cities and counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, and licensing of firearms and ammunition which is more restrictive than state law. All such existing ordinances are null and void.” (Underline added for emphasis)

This provision has greatly remained since. When this chapter of Century Code was reorganized, this language was relocated to 62.1-01-03.

For many years, this provision existed in state law without local governments running afoul of this provision. At some point in the late 90's or early 2000's, Fargo revised their zoning ordinances. These changes included provisions which restricted the purchase, sale, and transfer of ownership of firearms within residential areas by ordinance, the very thing the law forbids. However, this did not come to everyone's attention until about 2016, when the ATF refused to renew licenses for Federal Firearms Licensed Dealers (FFL's) who use their residence for their base of operations. This was apparently due to the City of Fargo claiming primacy over the state by notifying the ATF that their ordinance did not allow such businesses.

Several FFL's appealed to the city citing the state law prohibiting such ordinances. After much struggle and lack of success in appealing to the City of Fargo, the FFL's started putting political pressure on Fargo to change course. There was much debate during Fargo city commission meetings between the mayor and

commissioners as to what to do about this situation. Some commissioners groused about the fact that the state had preempted their authority to regulate guns, and cited other areas of complaint like the state preemption on a local gas tax as well as local bans on plastic bags. Ultimately it was decided that the city would request an AG's opinion. The AG declined to issue an opinion, and so the city sought out-of-state council to attempt to justify their overreach. They found such council that suggested that a zoning ordinance isn't an ordinance and thus was not restricted under state law. The city then proceeded to use that attorney's opinion to continue to justify the enforcement of their ordinance.

This is when I was asked to get involved. I spoke with the ATF agent in charge and he said it was the ATF's policy to not interpret the supremacy of state law over local ordinance, and that the ATF would need something from the state indicating the supremacy of the state law. So, I requested an AG's opinion, but was also declined. I then attempted to be very diplomatic with the city to try and find a non-legislative solution. I met with the mayor and city attorney several times, both in person and via video conference call to discuss solutions. Although I think the mayor wanted to help, the commission made it clear that they wanted to continue to be able to enact local gun restrictions. Thus, I felt I had no choice but to introduce a legislative fix.

Last session, we passed HB1248 which for clarity added that zoning ordinances were indeed a type of ordinance in which the state restrains local political subdivisions from using to supersede state law with further gun restrictions. State law has, since 1983 allowed local governments to relax state gun restrictions. Following the successful passage of HB1248 by the legislature and being signed by the Governor, the city of Fargo decided to sue the state in district court claiming a violation of constitutionally mandated local control. The AG argued that state law precluded such a city ordinance. Oddly, the court found in favor of the city of Fargo, but not based on their claim. Rather, the judge ruled that because the state chooses to not limit the location of where gun transfers could take place, that no local ordinance of that sort could be deemed to be more restrictive. In my opinion, this was a terrible decision and a dangerous precedent. I urged the AG's office to appeal the decision, but instead they did nothing and the deadline to appeal came and went. Thus, here we are again.

What is at issue, is whether we want local governments creating gun control or whether we want gun regulations to remain a state-controlled issue. Without this bill and in light of the court opinion, I think local political subdivisions could propose all sorts of local gun control, and based on the anti-gun track-record of the Fargo city commission, I think we could expect it.

HB1340 does essentially three things in three places in code. First, it reaffirms that the state does not allow more restrictive gun laws. Second, it separates out zoning ordinances and takes away the qualifier of more restrictive. This means that cities have no business passing ordinances dealing with guns and ammunition, period. Third, it directly nullifies the district court ruling by clearly stating that the absence of a state law relating to guns and ammunition may not be construed to allow an political subdivision to pass an ordinance restricting such things. Each of these items are then placed in the home-rule and zoning chapters of the law in addition to the weapons chapter, just to alleviate further "confusion" that the City of Fargo or other political subdivisions might have in the future.

Now more than ever, it imperative that we swiftly pass this bill, as written, out of the committee with a strong Do-Pass recommendation. Let's continue the strong tradition of the State of North Dakota standing up against local gun control. Constitutional Rights should not be restricted by local government. I would be happy to attempt to answer any questions that you may have.

Questions & Answers On Getting A Federal Firearms License

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How do I become licensed?

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The license application (called the ATF Form 7) is straightforward and can be found here: <https://www.atf.gov/firearms/apply-license>. In addition to the application itself, an applicant for a federal firearms license must also provide to ATF a photograph, fingerprints, and the license application fee, currently set at \$200 for the initial three-year period, and \$90 for each three-year renewal.

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What standards does ATF use to determine whether to give me a license?

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ATF will approve an application for a federal firearms license if the applicant:

- Is 21 years of age or older;
- Is not prohibited from shipping, transporting, receiving or possessing firearms or ammunition;
- Has not willfully violated the GCA or its regulations;
- Has not willfully failed to disclose material information or willfully made false statements concerning material facts in connection with his application;
- Has a premises for conducting business; and
- The applicant certifies that:
 - the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located;
 - within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business;
 - the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met;
 - the applicant has sent or delivered a form to the chief law enforcement officer where the premises is located notifying the officer that the applicant intends to apply for a license; and
 - secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees.

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What obligations will I have once I become licensed?

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Licensed firearms dealers are subject to certain requirements under federal law, including running background checks on any non-licensed person prior to transferring a firearm (subject to narrow exceptions), keeping firearms transaction records so that crime guns can be traced to their first retail purchaser, and ensuring safety locks are provided with every handgun, and available in any location where firearms are sold.

FFL (ATF Regs.)

Introduction

The federal Gun Control Act (GCA) requires that persons who are engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Federal firearms licensees (FFL) are critical partners in promoting public safety because—among other things—they help keep firearms out of the hands of prohibited persons by running background checks on potential firearms purchasers, ensure that crime guns can be traced back to their first retail purchaser by keeping records of transactions, and facilitate safe storage of firearms by providing child safety locks with every transferred handgun and having secure gun storage or safety locks available any place where they sell firearms. A person who willfully engages in the business of dealing in firearms without the required license is subject to criminal prosecution, and can be sentenced to up to five years in prison, fined up to \$250,000, or both.

Determining whether your firearm-related activities require a license is a fact-specific inquiry that involves application of factors set by federal statute. This guidance is intended to help you determine whether you need to be licensed under federal law.

Note that some states have more stringent laws with respect to when a state-issued license is required for selling a firearm. Please consult the laws of the state to ensure compliance.

In addition, this guidance focuses on the question whether your firearm-related activities require you to obtain a license. There are other laws and regulations that govern the transfer of firearms—both between unlicensed individuals and from licensed dealers (e.g., unlicensed sellers may only lawfully sell to persons within their own state, and it is unlawful for either licensed or unlicensed sellers to sell firearms to persons they know or have reasonable cause to believe cannot lawfully possess them). **All persons who transfer firearms, regardless of whether they are engaged in the business of dealing in firearms, must ensure that any transfers are in compliance with federal, state and local laws.**