

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

22/3

2007 SENATE JUDICIARY

SB 2213

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2213**

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1802

Committee Clerk Signature *Mona L Solby*

Minutes: Relating to possession of firearms by offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Robert Bennett, Assistant Attorney General (meter :30) Gave Testimony Att. #1

Sen. Nething asked Mr. Bennett to review the bill for the changes.

Sen. Fiebiger spoke of his concerns (meter 10:39) of a certain person who this bill will be able to have a gun and should not be. Discussed Subsection 1. Spoke of how the bill was crafted so not to let this happen. This is also addressed in the class of the offence.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Sen. Nething elected **Sen. Lyson** to craft an amendment to best address the issue of how to prevent the gun to get into the hands of the wrong person.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2213**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2213

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to possession of firearms by offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Bob Bennett, Attorney Generals office, presented amendments – Att. #1 and reviewed them with the committee (meter 1:97) Sen. Lyson stated that the amendments help his concerns but he is still wondering if we even need the law.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass the amendment – Att. #1 and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass SB 2213 as amended and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

Att #,
1-30-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2213

Page 1, line 7, after "felony" insert "offense" and remove the overstrike over "~~involving violence or~~"

Page 1, line 8, remove the overstrike over "~~intimidation~~" and insert immediately thereafter "in violation of", remove the overstrike over "~~chapters 12.1-16 through 12.1-25~~", insert after the overstruck comma "or an equivalent felony", and remove "this or"

Page 1, line, 9, remove "and the offense was committed while"

Page 1, remove line 10

Page 1, line 11, remove "subsections 7 and 8 of section 12.1-01-04, a destructive device or an explosive"

Page 1, line 18, remove the overstrike over "~~class A~~", after "misdemeanor" insert "offense", remove the overstrike over "~~involving violence or intimidation~~" and insert immediately thereafter "in violation of chapters 12.1-16 through 12.1-25 or an equivalent"

Page 1, line 19, remove "this or"

Renumber accordingly

Roll Call Vote # /

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2213

Senate	Judiciary	Committee
<p>1. U.S. Supreme Court</p> <p>2. U.S. Circuit Courts of Appeals</p> <p>3. U.S. District Courts</p>	<p>1. U.S. Supreme Court</p> <p>2. U.S. Circuit Courts of Appeals</p> <p>3. U.S. District Courts</p>	<p>1. U.S. Supreme Court</p> <p>2. U.S. Circuit Courts of Appeals</p> <p>3. U.S. District Courts</p>

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Amend*

Motion Made By Sen. Lyson Seconded By Sen. Olafson

[illegible]

Total Yes 6 No 0

Absent θ

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 1-31-07

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2213

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Lyson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2213: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2213 was placed on the Sixth order on the calendar.

Page 1, line 7, after "felony" insert "offense" and remove the overstrike over "~~involving violence or~~"

Page 1, line 8, remove the overstrike over "~~intimidation~~", remove the overstrike over "~~in~~" and insert immediately thereafter "violation of", remove the overstrike over "~~chapters 12.1-16 through 12.1-25~~", after the second overstruck comma insert "or an equivalent felony", and remove "this or"

Page 1, line 9, remove "and the offense was committed while"

Page 1, remove line 10

Page 1, line 11, remove "subsections 7 and 8 of section 12.1-01-04, a destructive device or an explosive."

Page 1, line 18, remove the overstrike over "~~class A~~", after "misdemeanor" insert "offense", and remove the overstrike over "~~involving violence or intimidation~~" and insert immediately thereafter "in violation of chapters 12.1-16 through 12.1-25 or an equivalent"

Page 1, line 19, remove "this or"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2213

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2213

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 4007, 4008

Committee Clerk Signature

APemrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2213.

Bob Bennett, Assistant AG: (see attached testimony).

Rep. Koppelman: You mentioned nolo contendere plea, do we have an Alfred plea in ND or is that the same thing.

Bob Bennett: An Alfred plea is different, that is where the person will plead guilty but the court will substantively do a factual finding, to say that there is a factual basis for the plea. A person can come in and say they plead guilty to the offense but I didn't do it. I have had several over the years when an individual hadn't killed the other party, but the party couldn't walk, we were able to prove that he was guilty, but he said that I'm pleading guilty but I didn't do it. We have a court hearing, the judge makes a factual basis to say that you entered a plea of guilty but we're finding that there is a factual basis. That's what NC vs. Alfred says, is that somebody could admit guilt or plead guilty, but deny guilt if there is a factual basis, the court will allow the claim.

Rep. Koppelman: You're saying that there is enough evidence to convict you, but you maintain you didn't do it. Do you need to put that in here, or is that when the state asks for it.

Bob Bennett: It doesn't make any difference. ND only recognizes a plea of guilty or not guilty. This is uniform across the country, where the NC vs. Alfred case applies, if there is a plea of guilty and that's what triggers this. There may be some states that say we don't require you to plead guilty. You can do a nolo contendere, to say granted you committed the car jacking, but you don't have to plead guilty.

Rep. Koppelman: When you say equivalent, you are talking about how people are nitpicking in terms of looking at our particular statutory citations, you are saying because of that it doesn't exist. Could that also be argued if they had a statute that's not necessarily equivalent to our statute, could we have substantial equivalency to protect against that.

Bob Bennett: This is one of the problems we have with this language. Back in 1985, we had the violent felonies, 12-16-25 to include murder and all kinds of offenses. Most of this triggers back also, when you look back in subsection 2, the class A misdemeanors, is this is one thing to look at in the bill, I think on the Senate side; they looked at taking out any reference to 12.1-16-25. I think the cleanest way that it ended up being, is the fact that it's defined in these chapters. Now we have an identifiable area whether it is a 10 year prohibition. This has nothing to do with felonies that are just regular felonies, that's a general five years. You don't have to prove that they are part of any 12.1-16-25 or anything else. This relates to, you can have a 10 prohibition for saying, if it involves a felony, which is defined in our law, or equivalent law. When you look at the offenses that we have in that, that's pretty easy to look at. In 12.1-16-25 is murder, whether they call it premeditated murder or 1st degree murder. It's still murder, it's equivalent to that. Other felony crimes of violence, assault or homicide, or fleeing a police officer. The vast majority of penalties that we have here where this is invoked is a straight five year for any felony.

Rep. Koppelman: You're saying that the term equivalent is good enough and because of the type of offenses, there isn't going to be a gray there, that somebody could argue that it's not equivalent because the way the statute reads and it acts different than ours.

Bob Bennett: Yes, but if there is an issue, that doesn't mean that they can walk away with nothing. You can still go to subsection 2 and say if you've been convicted of any other felony offense, no matter what it is, you still have a five year. That begins at the end of their probation or parole, if you have a five year sentence, then you've got 10 years probation.

Rep. Charging: Could you give a real life example of how this works.

Bob Bennett: The main instances where we see, this works now, but we have to explain things. If someone is on probation right now, they know they can't possess firearms. The big things that we have is like the Brady Instant Check System. I have contacts from federal place in West Virginia, saying 1) is this offense one that would bar the person under ND law; what is an offense that may be a violation of 12.1-16-25, and I have a little list that I give them. Murder is shooting at somebody, forcible rape is another offense that would be involved. What we have are basically situations where individuals who wish to purchase firearms, they are convicted out of state, have questioned it through our contacts, through us or through BCI, sometimes I have direct contact, and a lot of times it goes to BCI to look at the criminal history to see is it covered under this or not. If we've had a person convicted of an offense in MN, they came over to Fargo to buy a rifle; I just had this call last week. They wanted to know if they were barred under ND law. It was a drug offense, it was a felony and we then keyed into this, was it a felony, would they be barred for 5 or 10 years; his time had expired, so he could buy it. That was a situation where the instant check people had to contact us, and we found out the information and finally got back to the dealer to go ahead and sell it. The peace officer situation was problematic because we had an individual, who pled guilty to a violent offense,

but he found out that he couldn't possess a firearm; he went over to the MN courts and had the court issue an ex parte order restoring his rights under MN law. He says since I have this piece of paper, saying I can do it in MN, I can do it in ND, but nobody in ND could have done it. The fact that they may have restored it, you can certainly possess there in MN but not in ND, because they have different laws than we have. We still have the ability to control the access to both possession and control. That's one of the issues that we have, but the second thing is that people claim that the current statute for a felony, that there may be a conflict between here and there. I'm trying to take away the conflict, so long after I'm gone; people aren't going to be arguing in court about what that really means.

Rep. Charging: Isn't domestic violence a felony, is there a lifetime ban.

Bob Bennett: That's under federal law. There is a federal law to get a concealed permit, you have to say you're not barred under federal law, and there are certain requirements here. If you've been found guilty or pled guilty or convicted of a crime, a misdemeanor crime involving domestic violence, it's a lifetime prohibition. There is no law enforcement exception, no exceptions except if you can find something under a dispensation tested under federal law. There are a lot of other federal laws that prohibit people from possessing other than the state law.

Rep. Charging: Are you able to track that. Are we able to follow through? If somebody is convicted of a domestic violence charge and they try to get their hunting conservation license. What do we do in that case?

Bob Bennett: That would be a federal prohibition for the possession, I don't know, as far as the cross checks go, all we have are the records that we have here, and the Instant Check system. I don't know what cross checks they have on that. I know that has happened, where you've looked at individuals with a record, they can run the record but it's not going to initial.

There are individuals who can have a hunting license without possessing a firearm. That has happened. I bought a fishing license and never went on the water.

Rep. Boehning: What about someone who collects antique guns. Would they be prohibited from bringing them into the state then as well?

Bob Bennett: In subsection 3, a device that can expel a projectile. I think if it falls within that definition of the weapons statute, for possessing a firearm, it's not linked to other dangerous weapons, but a firearm, if it is an antique, a collector's item, any device which will expel and readily capable expelling a projectile by action or explosive. If you can't expel a projectile, then probably not.

Rep. Boehning: If you had shotguns in the home, and the person was convicted of a felony, if you removed the firing pins from the guns, would that be permissible under the law.

Bob Bennett: I can't tell you that. I can tell you in practice, the law does not require you to sell or dispose of the items. It does require that you don't have possession or control of them. You can give them to the neighbor, as long as you didn't have access or possession of them. This is what we tell probationers and parolees, if they are barred by this. You don't have to get rid of your firearms; you have to find a place for them that's not in a locked gun cabinet, of which you may still have access to. You have to get it out of the house and put it somewhere and do it. It may depend upon the circumstances. If you are still on probation or parole, you can't have access, whether unloaded or not.

Rep. Koppelman: We have reciprocity with our concealed carry law. Does this follow that? If the example of the person in MN who received the ex parte order, if he had a concealed carry permit in MN, and came to ND, is that a conflict.

Bob Bennett: We don't have reciprocity with MN.

Rep. Koppelman: Let's say a state we did.

Bob Bennett: Our reciprocity and most every other reciprocity states require that you comply with the law of the state in which you are in. The only issue we might have, if someone is in the state, you might give them one free possession or control if they have the permit, but they are subject to all the same laws as everybody else in the state. If I went to NC with my concealed weapon, I am subject to their laws relating to the possession and use.

Rep. Onstad: It always makes reference to another state or federal law. What about a class A misdemeanor or tribal.

Bob Bennett: I don't know if that would be classified with that. If, in fact, that would be equivalent to a class A misdemeanor, is up to a year in prison, and I don't know if the tribal court would have that. If it is a situation that may involve other crimes that may involve a domestic violence, that's a good federal offense anyway. This is one issue that we had in the Senate side. We took out some of this information relating to 12.1-16-25 where we just basically keyed it to possession of a firearm. But then when you did that, you brought in class A misdemeanor game and fish violations, if somebody is out there hunting in violation of a game and fish law, which is a class A misdemeanor, you could get picked up for illegal hunting. That may bar you from possessing any firearm for five years. That was problematic, so we basically got back to where we could meet the problem that we're going to have and wanted to make sure that we had the identifiable limits so there won't be any question in people's mind.

Rep. Charging: Anyone convicted in a tribal court, in relation to that crime, it is federal.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(continued)

Chairman DeKrey: We will take this bill up. What are the committee's wishes in regard to SB 2213.

Rep. Delmore: I move a Do Pass

Rep. Meyer: Second.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Koppelman

Date: 2/27/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2213

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf		
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2213, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2213 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2213

Att #1
1-24-07

TESTIMONY OF
ROBERT BENNETT, ASSISTANT ATTORNEY GENERAL
REGARDING SENATE BILL NO. 2213

Mr. Chairman and members of the Senate Judiciary Committee, I am Robert Bennett, assistant attorney general, appearing in support of Senate Bill No. 2213.

Senate Bill No. 2213 amends N.D.C.C. § 62.1-02-01 that prohibits the possession or control of a firearm after a plea or a finding of guilt to a felony and certain misdemeanor offenses.

N.D.C.C. § 62.1-02-01 was a part of a major weapons law revision by the 1985 Legislative Assembly. Both subsections 1 and 2 of N.D.C.C. § 62.1-02-01 are substantially unchanged since their adoption in 1985.

Subsections 1 and 2 of N.D.C.C. § 62.1-02-01 prohibit the possession or control of a firearm by a person who has pled, or has been found, guilty of certain offenses for either a ten-year or a five-year period after the date of conviction, the release from incarceration, or the release from probation, whichever is the latest.

Subsection 1 of section 62.1-02-01 imposes the ten-year prohibition of firearm possession for a person who has been convicted anywhere of a felony involving violence or intimidation as defined in N.D.C.C. chs. 12.1-16 through 12.1-25.

Subsection 2 of section 62.1-02-01 imposes a five-year prohibition of firearm possession for a person convicted of any other felony offenses not provided for in subsection 1 (those offenses not involving violence or intimidation as defined in chapters 12.1-16 through 12.1-25).

In addition, this five-year prohibition of firearm possession is also applied to a person convicted of a class A misdemeanor offense involving violence or intimidation and the crime was committed while using or possessing a firearm or dangerous weapon.

Although few questions have arisen regarding application of N.D.C.C. § 62.1-02-01 to the general felony prohibition of subsection 2 of that section, issues have been raised relating to the scope of the felony prohibition under subsection 1 and the class A misdemeanor prohibition under subsection 2 when determining what offenses defined in N.D.C.C. chs. 12.1-16 through 12.1-25 involve violence or intimidation. Although these questions have not resulted in a successful attack upon these provisions, Senate Bill No. 2213 is intended to simplify and clarify what felony offenses are subject to the ten-year firearm prohibition and what misdemeanor offenses are subject to the five-year firearm prohibition.

Over the years, I have been in contact with federal prosecutors as well as those persons who may be involved in the Brady law criminal history check system regarding whether a person convicted in North Dakota of certain offenses would be subject to a firearm prohibition thereby prohibiting that person from either obtaining a firearm or subjecting that person to a federal firearms prosecutions in North Dakota or other states. A federal prosecution for unlawful firearm possession is often dependent upon the applicable state law and whether a person is prohibited from owning or possessing a firearm based upon a state conviction. The question has been presented: What is a felony involving violence or intimidation as defined in chapters 12.1-16 through 12.1-25? Many of these offenses subject to the ten-year firearm prohibition are obvious and others may not be.

The five-year firearm possession prohibition of subsection 2 of N.D.C.C. § 62.1-02-01 does not pose the same problem since it will apply to any felony, whether or not the crime involves violence or intimidation.

However, class A misdemeanor offenses subject to the five-year prohibition in subsection 2 must involve violence or intimidation and pose the same issues as those felonies in subsection 1 of section 62.1-02-01 imposing the ten-year prohibition.

As to the felony offenses that invoke the prohibition of N.D.C.C. § 62.1-02-01(1) and (2), Senate Bill No. 2213 simplifies and clarifies who may or may not possess firearms in North Dakota, whether or not the prohibition is based upon a North Dakota conviction.

These amendments to N.D.C.C. § 62.1-02-01 will reaffirm the basic premise of N.D.C.C. § 62.1-02-01 that if a person is convicted anywhere, and not just in North Dakota, of a felony, that person must be subject to the same firearm possession prohibition as a person convicted of a similar offense in North Dakota. It would certainly seem contrary to a common-sense application of the law and the basic intent of this statutory prohibition to conclude that a North Dakota offender may be subject to a firearms prohibition but a person who is convicted of a similar crime in another state may not be subject to that prohibition when they visit or move here.

As to the felony offenses subject to the firearm prohibitions under subsections 1 and 2 of N.D.C.C. § 62.1-02-01, every offender will be treated the same. If the person has pled or been found guilty of a felony in this state, in another state, or by the federal government, the statutory prohibition will apply regardless of the sentence imposed, the actual definition or title of the offense given to it by the other jurisdiction, or where the offense and conviction may have occurred. If a person who has pled or been found guilty

of a felony offense in another jurisdiction enters North Dakota, that person will be subject to the same firearm possession prohibition as a North Dakota felony offender who has never set foot outside of this state's boundaries.

Subsection 2 of N.D.C.C. § 62.1-02-01 relating to conviction of a class A misdemeanor involving violence or intimidation while possessing a firearm or dangerous weapon is somewhat more problematic. A felony involving violence or intimidation that triggers the firearm prohibition in subsection 1 of section 62.1-02-01 presents many of the same issues regarding what offenses fall within the class A misdemeanor prohibition. However, there are different concerns relating to application of misdemeanors to the firearm prohibition that are not present when there has been a plea, or finding, of guilt to a felony.

Not all states or the federal government classify their crimes as we do. A "class A" misdemeanor offense may not have that same title or classification in another state even though the offense may involve similar conduct.

There may be many misdemeanor offenses that are obviously violent or intimidating and, if a firearm or dangerous weapon is used in the commission of the offense, the five-year firearm prohibition can be applied. Certain class A misdemeanor offenses falling within these crimes may include menacing or assault. In each of these instances, if the offender is convicted and used or possessed a firearm or dangerous weapon while committing the offense, the five-year firearm prohibition would apply.

The proposed amendments in Senate Bill No. 2213 to the misdemeanor offense prohibition may address many of these of these issues but may also include misdemeanor offenses that normally involve the use or possession of a firearm. As an example, an

unlawful hunting violation relating to trespass, exceeding bag limits, hunting without a license, or similar offenses may be committed while using or possessing a firearm. Commission of these offenses may not justify the fire-year firearm prohibition.

This specific issue is one that may require consideration by this committee. In the past 20 years, I have stood before this and other legislative committees stating what we would like to see you do with specific legislation. However, I am here, as it relates to the misdemeanor prohibition, asking you this question: How do you want to handle this?

Simplifying and clarifying the felony firearm prohibitions is relatively easy. However, this simplification and clarification for the misdemeanor offenses is not so easy. I would be happy to work with the committee to work on this issue if the committee otherwise expresses a desire to approve the remaining amendments to Senate Bill No. 2213.

The Attorney General requests your favorable consideration of Senate Bill No. 2213.

This is how subsections 1 and 2 should read after the proposed amendments to SB 2213. All remaining portions of the Bill are unchanged.

62.1-02-01. Persons who are not to possess firearms - Penalty.

1. A person who has been convicted anywhere ~~for~~ of a felony offense involving violence or intimidation in violation of, ~~as defined in chapters 12.1-16 through 12.1-25;~~ or an equivalent felony offense of another state or the federal government, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

2. A person who has been convicted anywhere of any a felony offense of this or another state or the federal government not provided for in subsection 1 or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and ~~that crime~~ the offense was committed while using or possessing a firearm, ~~or a~~ a dangerous weapon, or, as defined in ~~chapters 12.1-16 through 12.1-25~~ subsections 7 and 8 of section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

TESTIMONY OF
ROBERT BENNETT, ASSISTANT ATTORNEY GENERAL
REGARDING ENGROSSED SENATE BILL NO. 2213

Mr. Chairman and members of the House Judiciary Committee, I am Robert Bennett, assistant attorney general, appearing in support of Engrossed Senate Bill No. 2213.

Engrossed Senate Bill No. 2213 amends North Dakota Century Code § 62.1-02-01 prohibiting the possession or control of firearms by a person who has pled to, or been found guilty of, a felony or certain violent misdemeanors.

Since this section was first adopted in 1985, North Dakota has prohibited the possession or control of firearms by these persons for either five or ten years after the person's conviction or release from incarceration or probation.

The ten-year firearm possession prohibition applies to a person who has been convicted of a felony involving violence or intimidation.

The five-year firearm possession prohibition applies to a person who has been convicted of any other felony that does not involve violence or intimidation.

The five-year firearm possession prohibition also includes a person who has been convicted of a class A misdemeanor involving violence or intimidation and the crime was committed while using or possessing a firearm or dangerous weapon.

Concerns have been raised regarding the application of these prohibitions to a person in possession of a firearm in North Dakota who has been convicted of crimes in other states or by the federal government.

Engrossed Senate Bill No. 2213 clarifies that anyone convicted of a felony or certain violent misdemeanor offenses, regardless of whether that conviction occurred in North Dakota or another state or in the federal courts, will be subject to the same firearm possession prohibitions in North Dakota. The firearm possession prohibition applies to not only offenses found in the North Dakota law but, also, to crimes of other states or the federal government that are equivalent to the North Dakota offenses. These amendments, found on page 1, lines 9, 14-15, and 17-18 of the Bill, will treat a convicted offender from other states or other jurisdictions the same as a person convicted in North Dakota courts of equivalent crimes. These amendments to section 62.1-02-01 reaffirm that if a North Dakota-convicted offender cannot possess or control a firearm, then any person who has been convicted of an equivalent offense in another state or by the federal government also cannot possess or control a firearm in North Dakota.

Engrossed Senate Bill No. 2213 maintains current North Dakota law by the triggering the firearm prohibition upon the plea of guilt (or nolo contendere) or a finding of guilt to an offense regardless of any sentence disposition, reduction, or offense determination that may be granted by North Dakota, another state, or the federal government. (page 2, lines 14-30 and page 3).

Engrossed Senate Bill No. 2213 also amends section 62.1-02-01:

to add parole as an event when the time of the firearm prohibition will begin to run (page 1, lines 12 and 24);

to include a nolo contendere (no contest) plea to an offense. North Dakota does not have such a plea, but other states may permit this plea to an offense instead of a plea of guilty (page 2, line 17);

and,

to add explosive or destructive devices as other items that may be used to commit a violent class A misdemeanor offense to allow imposition of the five year firearm possession prohibition (page 1, lines 20-21).

The Attorney General requests your favorable consideration of Engrossed Senate Bill No. 2213.