

**2017 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1391**

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau –A Room, State Capitol

HB 1391  
1/26/2017  
27509

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to manufactured firearms, accessories, and ammunition

### Minutes:

Attachment 1

**Chairman Porter:** Called the committee to order

**Rep. Luke Simons,** District 36, Chief Sponsor of HB 1391, presented Attachment 1. It would start up small and large manufacturer in ND. It would have added increased tax revenue. Do Pass

**Chairman Porter:** questions? Testimony in support?

**Charissaa Rubey,** Cayuga, ND. Own 2 manufacturing companies. Since 2002 we manufactured ag back up cameras for farm equipment, for a while in car surveillance for police cars. We're primarily in ag manufacturing. With ag changing, the economy going down, we wanted to look at other business opportunities to keep everyone employed. We looked at everything from shovels to lollypops. We're also shooters, we like to hunt. This bill isn't about the 2<sup>nd</sup> Amendment for us. It's about manufacturing, it's about business. We considered manufacturing suppressors. There's big business for suppressors. We decided not to even though it was within our scope. We were considered the federal government would pass a law, and all the time, money, resources, everything would be gone and it would be a loss. We'd have to lay people off and possibly harm our other business. The other option was gun powder because there's only 2 companies in the US that manufacture gun powder. They're both Federal contracts (inaudible 5:10). Should the federal government decide they want 100% of their powder they can take it and it would leave no powder for the rest of the US. Most powder comes from out of the country. If we were to get into a fight with some of these other countries, lot of them come from Croatia, Servia, and Asia, there would not be nearly enough gun powder in this country. We manufacture very little because of EPA regulations. We decided to make something predictable. We can buy brass. There's 4 components for a bullet and let's make ammunition. We wanted to be able to support our local law enforcement because we knew they were having a tough time getting ammunition. We thought even if it's a small business, we can service a 3-5 state area with this ammunition business. We'd make sure our local law enforcement had duty rounds and good practice rounds. The way the bill

is currently worded, technically it wouldn't protect us as an ammunition manufacturer, because 75% of a bullet can't be made in the state of ND. Primers, brass and powder I can't make the way the law is in ND. I want to express to you how hindering it can be when you get different political views. We're limited in our decisions and affects our business decisions.

**Rep. Lefor:** If this bill would become law, what would you manufacture?

**Charissa Rubey:** We'd expand the ammunition manufacturing. Right now there's a lot of laws; if we'd had a Democratic winner for president, we would have seen bans on lead for projectiles. There would have been shortages of almost everything there was to make ammunition. As a manufacturer we want to start making components, gunpowder, brass. There's a huge opportunity to add a 4<sup>th</sup> leg of manufacture in ND. Right now we have oil, ag, UAV in Grand Forks. I would like to see us as a business and us as a state get into that more.

**Chairman Porter:** Could you under this bill manufacture a fully automatic weapon?

**8:50**

**Charissa Rubey:** A personal firearm is not an automatic weapon. Automatic weapons are illegal. A semi-automatic weapon.

**Chairman Porter:** You were talking about silencers.

**Charissa Rubey:** A silencer would be hearing protection. So you would be able to fire a weapon without wearing earplugs.

**Chairman Porter:** Right, but they're federally licensed.

**Charissa Rubey:** They're regulated correct.

**Chairman Porter:** You think by passing this bill you could manufacture a silencer, sell it to someone within the state and they could legally possess that without having the federal permit?

**Charissa Rubey:** No of course not. No, all I'm saying is we decided not to manufacture them because of concerns about future legislation that could possibly make them illegal. Depending on which political party is in, which way our manufacturing business would go. If Democratic, there probably would have been a ban on suppressors, or further limitations. We weren't willing to take that business risk. With a law like this, it provides a bit of a safety net for a business. As long as I can say, as long as I can still sell it in the state that I manufactured in, that gave me permission to manufacture, I wouldn't be a total loss. You would never consider selling a suppresser outside of the law. We are manufactures. I'm going to live within the limitations of what I'm going to make and build.

**Chairman Porter:** What advantage this would give you as the manufacture?

**Charissa Rubey:** Let's say an accessory. Suppressors protects the shooter's hearing. Let's say I want to make these. I do the permits, etc. I invest in all the time, training and machining.



Then the federal government comes in and says, "those are illegal now, you can't make them." This is a legal product I was making. Look at a knife. More people die from knives than guns. There are people making knives that would not have this dilemma. There's plenty of people producing knives. My state is saying I'm not going to penalize you for deciding to have a business in my state. We will protect you, your rights, and the investment you made in our state.

**Chairman Porter:** You're saying by passing this law and if the federal government came in and said suppressors were illegal, then you would still manufacture them. And a person could carry them without the Class 2 FFL?

**Charissa Rubey:** That would be up to the state. I'm not going to violate state law. I'm saying, as a manufacturer, I would like the state to protect me. I'm not going to make them outside of the law. If the state makes them illegal. I want to build products, give people jobs, and make money. I want to feel safe in doing that and investing money in the state I'm in.

**Chairman Porter:** I'm still a little unclear how possession trumps the federal law.

**Rep. Anderson:** 11 other states able to make guns (inaudible 14:45). Are they currently making guns or firearms?

**Charissa Rubey:** I don't know. Colorado imposed strict limitation on gun manufacturing and they left the state. We want to say we're open for business for lots of federal money to come in. UAV projects, etc, that's a lot of federal dollars. I want to stay here, and have a business from small investors, and I like this state. It's about manufacturing and a pro-business environment. I'm not going to sell anything illegal.

**16:33**

**Rep. Sebastian Ertelt, Dist.26.** I asked Mrs. Rubey to testify and what she thinks this will do for her business, allowing her to do more business within the state. I believe this bill is an affirmation of what exists in the 2<sup>nd</sup> Amendment and our state constitution and affirming the right to keep and bear arms.

**Rep. Roers Jones:** Are you familiar with other states where this has been applied to guns and ammunitions? Where this law has been instituted in another state and the federal government, some portion of that is illegal and the states are still continuing to do that?

**Rep. Ertelt:** I am not. The laws are still on the books in those states.

**Rep. Roers Jones:** The reason I'm asking is, it seems like this would be ineffective for the purposes you're hoping to use them based on the supremacy clause in the US Constitution. Have there been other instances where you've seen this work in other states?

**Rep. Ertelt:** I do not know of any.

**Rep. Luke Simons, District 36:** Yes, that has happened. The last state that did that, made suppressors, and their state said suppressors were okay there. Individual bought a number

of suppressors, took them across state lines. He got in trouble for commerce which was the only case out of the 9 states that have done this, there was an issue. It's giving the state the right to say we don't allow fully automatic machine guns here, which we obviously don't allow. So the state would have more control than the federal.

**Rep. Roers Jones:** You talked about suppressors and machine guns. Try to explain again.

**Rep. Simons:** In US you can own a full automatic gun if you have a license. Same with a suppressor. In that state they said you don't need a license to have a suppressor. They're not like Hollywood portrays, they're not silencers. It's like a muffler. Lead us back to a state's rights.

**Rep. Roers Jones:** You're saying the product was allowed in one state, taken to another state where it was illegal. That's not a supremacy clause (22:22? Clause or law) issue. The supremacy clause (?or laws) issue would be if the federal government said suppressors are illegal federally, rather than requiring a permit for them. They say the law of the land, they're illegal, and ND would try to say, as long as we make them in ND and you keep them in ND, they're not illegal. That wouldn't be the case because the federal constitution and laws promulgated under the federal constitution, are supreme over laws promulgated by state. That's the question.

**Rep. Luke Simons:** Yes. The state of CO has taken that to a new level as far as pot goes. The 9 states have not been questioned by the federal government. This is a federal government issue of back to states' rights. States getting the guts to saying your gun laws don't apply here, and we're not bowing to your pressure anymore.

**Chairman Porter** questions? Testimony in support?

**Justin LaBar,** from District 2. I question what are we afraid of? What will the fed government do to us? How far do we let them go and when do we push back? We literally have to put in a bill here as a state that un-machined steel and unshaped wood are not firearms, firearm accessories, or ammunition. We've come to that point in the USA where a state has to put that into their Century Code that those types of items are not firearms! I find that ridiculous to put that into our century code. I've come to the conclusion in recent months, that the only hope for this nation does not lie in WDC, it lies in states, and here, it lies with you, our representatives. If we have to put on the gloves and fight with those in WDC, then I say as a citizen of ND, so be it. Get it on and get it done. There's not a gun law on the books that stops bad people from doing bad things. It's a good thing for the state of ND and people to open up businesses.

**Chairman Porter:** Questions? None. Testimony in support? In opposition? Closed the hearing on HB 1391.



# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau –A Room, State Capitol

HB 1391

2/9/2017

28165

Subcommittee

Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to manufactured firearms, accessories, and ammunition

### Minutes:

Attachment #1

**Meeting location:** Coteau Room

**Date and Time:** 2/09/2017

**Members present:** Chairman Lefor, Rep. Roers Jones, Rep. Heinert

**Others present:** Chief Phil Pfennig

### Topics of discussion:

- email from Chris Kopacki, NRA, Attachment #1
- we can't pass HB 1391 because it would be in conflict with federal law

### Motion and vote:

**Rep. Roers Jones:** based on that I will make a motion for a Do Not Pass recommendation

**Rep. Heinert:** second

**Chairman Lefor:** Discussion? Voice vote, motion carried.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau –A Room, State Capitol

HB 1391  
2/16/2017  
28479

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to manufactured firearms, accessories, and ammunition

### Minutes:

Attachment #1

**Chairman Porter:** Called the committee to order on HB 1391.

**Rep. Lefor:** After some discussion in the subcommittee, the email handout, Attachment #1, this is from the NRA itself. Basically they stated that due to the supremacy clause with the federal government, HB 1391 would be afoul of federal law. You'll see where it was passed in other states. They've had a lot of conflicts with the Bureau of Alcohol, Tobacco, Firearms and Explosives. We feel this bill as a result of that should be a Do Not Pass. That is your subcommittee's recommendation.

**Rep. Lefor:** I move a Do Not Pass on HB 1391

**Rep. Anderson:** Second

**Chairman Porter:** I have a motion for a Do Not Pass on HB 1391, and a second. Discussion? Seeing none the clerk will call the roll on a Do Not Pass to HB 1391.

Aye 12    No 0    Absent 2    Motion carries. Rep. Roers Jones is carrier.

Date: 2-9-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1391

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass  Do Not Pass
- As Amended
- Place on Consent Calendar
- Without Committee Recommendation
- Rerefer to Appropriations

Other Actions  Reconsider  \_\_\_\_\_

Motion Made By Rep Roers Jones Seconded By Rep Heinert

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Voice vote, motion carried.

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



Date: 2-16-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1391

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or  
Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass  Do Not Pass  Without Committee Recommendation
- As Amended  Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider  \_\_\_\_\_

Motion Made By Rep Lefor Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	AB	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	AB	
Rep. Devlin	✓		Rep. Seibel	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Mock	✓	

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Roers Jones

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

**REPORT OF STANDING COMMITTEE**

**HB 1391: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
HB 1391 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1391



1-26-17  
HB 1391  
#1

Testimony in Favor of HB 1391  
Rep. Luke Simons, District 36, Chief Sponsor

Ladies & gentlemen of the Committee, thank you for the time to speak about this important legislation. This is a very simple bill, so I will be brief.

The Second Amendment clearly establishes an individual right to bear Arms, which has been later affirmed by the Supreme Court. If we have the freedom to bear arms, it stands to reason that we have the freedom to produce them. Moreover, Article I, Section 8 of the US Constitution states that Congress has the authority "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

Arms produced within the state of North Dakota and sold within the state of North Dakota are therefore intrastate, not interstate. Therefore, they are exempt from federal regulations.

Our bill will exempt firearms, accessories & munitions manufactured in North Dakota from federal regulation. Under the U.S. Constitution, this is our State's Right, as said in the 9th and 10th Amendments - something has exercised above all else, making our state proud of our uniqueness.

This legislation was modeled on the Montana Firearms Freedom Act, which was signed into law in 2009. Montana Attorney General Tim Fox and Solicitor General Lawrence VanDyke said in their Jan. 6 filing to the Supreme Court that courts should more carefully scrutinize Congress' power to regulate purely intrastate products whose effect on the interstate market is not obvious - especially when federal regulation would trump the state's' policing powers.

Currently, 9 states have enacted similar legislation and many more are actively pursuing it. This legislation affirms the true intent of the Second Amendment by prohibiting that which is clearly in plain English written within that Amendment, which are the words "shall not be infringed". If we allow federal law to tell us what, when, where why and how we can make firearms, accessories, munitions, then they are necessarily infringing upon the Second Amendment. This bills says that they cannot do that now, and that they never can.

Essentially, this legislation affirms the rights of all North Dakotans - which is to use establish businesses and their property to produce products without interference from the federal government. This principle is simple, we have a right to our property and to use it as people and as a state.

If we have candle factories in North Dakota, do we allow Washington bureaucrats to tell us how make wax?

Ladies & gentlemen of the Committee, I urge a 'Do Pass' vote on HB 1391. Thank you once again.

Thank you  
Luke Simons

**Lefor, Mike**

1  
HB 1391  
Sub committee  
2-9-17

**From:** Porter, Todd K.  
**Sent:** Friday, February 3, 2017 1:03 PM  
**To:** -Grp-NDLA House Energy & Natural Resources  
**Subject:** FW: Firearms Freedom Act Research

Fyi

**From:** Kopacki, Christopher [mailto:CKopacki@nrahq.org]  
**Sent:** Friday, February 3, 2017 7:57 AM  
**To:** Porter, Todd K. <tkporter@nd.gov>  
**Subject:** Firearms Freedom Act Research

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Todd-

Per your request, here is an outline of the concerns with similar Firearms Freedom Act legislation from around the country. Also, I just found this article where a federal judge struck down a similar law in Kansas (see <http://cjonline.com/news/state-government/2017-01-31/judge-federal-firearms-regulations-trump-kansas-gun-law>).

Several states have passed or considered "Firearms Freedom Acts" or "Second Amendment Preservation Acts" which seek to make federal laws regarding firearms inapplicable to firearms and ammunition produced, sold, and used exclusively within the state's borders.

Montana passed the Montana Firearms Freedom Act, Mont. Code Ann. § 30-20-104, in 2009; Wyoming enacted its Firearms Freedom Act, now codified at Wyo. Stat. § 6-8-405, a year later.

Following the passage of the Wyoming law, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advised Wyoming federal firearm licensees (FFLs) in a guidance letter that "because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their implementing regulations, continue to apply..." (Open Letter from Audrey Stucko, Acting Assistant Dir., Enforcement Programs & Servs., ATF, to All Wyoming Federal Firearms Licensees (May 28, 2010), at <https://www.atf.gov/file/83696/download>.) A similar letter had been sent to Montana FFLs after the passage of the Montana law, and likewise stated that the law conflicted with federal firearms laws, and that federal law superseded the state law and continued to apply. (Open Letter from Carson W. Carroll, Assistant Dir., Enforcement Programs & Servs., ATF, to All Montana Federal Firearms Licensees (July 16, 2009), at <https://www.atf.gov/firearms/docs/open-letter/montana-july2009-open-letter-guidance-regarding-montana-firearms-freedom/download>.)

In a federal lawsuit brought by the Montana Shooting Sports Association and others, the United States Court of Appeals for the Ninth Circuit ruled that the Montana Firearms Freedom Act was preempted by federal law and invalid; see [\*Montana Shooting Sports Ass'n v. Holder\*](#), 727 F.3d 975 (9th Cir. 2013), with the United States Supreme Court declining to hear an appeal. In brief, the court concluded that based on "precedent from the Supreme Court and our own court that we are bound to follow... Congress's commerce power extends" to regulating firearms initially manufactured and sold



exclusively intrastate, based on the substantially effect this activity could have on the interstate market in guns. *Id.* at 982-83.

The validity of such laws was raised more recently in a federal enforcement action. After Kansas passed its Second Amendment Protection Act, codified at Kan. Stat. Ann. §§ 50-1201 through 50-1211, in 2013, a state resident sold locally made suppressors in reliance on the state law (which declares, in part, that any firearm or “firearm accessory,” including a silencer, which is made in Kansas and which remains in Kansas, “is not subject to any federal law ... under the authority of congress to regulate interstate commerce”). Both the seller and a customer were charged with various violations of the federal National Firearms Act (NFA), including the unlawful manufacture, transfer and possession of an unregistered firearm. Neither man believed he was violating the law. They [unsuccessfully moved to dismiss](#) the charges on the basis, among others, that the NFA was an invalid exercise of Congress’ power to tax, and that criminalizing the intrastate possession of a firearm did not implicate Congress’ power to regulate interstate commerce. It appears that subsequently, a jury rejected their defense that they, in good faith, relied on the Kansas law: see <https://bearingarms.com/ba-staff/2016/11/25/kansas-mans-homemade-suppressors-clash-federal-law> and <http://www.guns.com/2016/11/15/jury-finds-kansas-men-guilty-on-weapons-charges-despite-state-exemptions/>.

One of the defendants has since been quoted as saying, “I need to know why the state is setting up its citizens to be prosecuted by the United States of America.” See <http://cjonline.com/news/2016-11-05/federal-prosecution-puts-spotlight-kansas-gun-law>.

I hope this helps. Please let me know if you need anything else.

-Chris

**Christopher G. Kopacki, Ph.D.**  
**National Rifle Association**  
Institute for Legislative Action  
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HB1391  
2-16-17  
1

**Lefor, Mike**

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