

**2019 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**

**HB 1148**

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1148  
1/17/2019  
30952

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Kathleen Davis
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### Explanation or reason for introduction of bill/resolution:

a bill relating to possession of firearms or dangerous weapons

### Minutes:

Attachment 1, 2
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**Chairman Porter:** called the hearing to order.

**Rep. Boschee:** presented Attachment #1

**Chairman Porter:** Have you had any discussion regarding questions the federal system and federal application to legally purchase a gun?

**Rep. Boschee:** Not specific to the application to applying for a firearm. Conversation with Legislative Council was ATF would still have its standards and this would be limited to state and local law enforcement.

**Chairman Porter:** the local law enforcement would be moving things through the States Attorney's office who would say this can no longer be in district court and must move to federal. Do you think it's prudent to give people a false assurance they're doing something legal when it's federally illegal?

**Rep. Boschee:** When you say crime do you mean have possession of marijuana or another crime while also having possession of marijuana?

**Chairman Porter:** just related to this, possession while in possession of marijuana.

**Rep. Boschee:** There could be that false sense of security or there wouldn't be legal implications. The concern is people recognize the federal government isn't prosecuting these cases but down the road it could and there are no assurances. That would then advance to federal jurisdiction. In the home if there's law enforcement present in the home, someone has a medical marijuana card, and also a firearm present, the implications of that, so we want to draw the line there.

**Chairman Porter:** further questions? In support?

**Steve James Peterson**, The Committee for Compassion and Care and speak to as a patient: presented Attachment 2.

**Rep Heinert:** How do we counteract the federal requirement on the ATF form that you are have to sign off saying you are not a user?

**Peterson:** Until the ATF changes that form, we're going to have to follow the law. As long as our state patients have not committed any other crime, we should not impede their 2<sup>nd</sup> amendment right. On the Federal level, this is a step we can take as a State of ND to inform them we do not see those people as a hazard or danger and hopefully the AG's office will respect that to patients within the state.

**Rep Heinert:** Are you aware of any other states that have applied this right to the people?

**Peterson:** I am not, however, I consider the 2<sup>nd</sup> amendment along with the 1<sup>st</sup> amendment and Bill of Rights, an inherent right. To enact anything to say a patient does not qualify for their 2<sup>nd</sup> amendment rights because of the medicine required would be an infringement. Let our patients know they will not be treated as criminals as long as they don't do any other criminal acts that preclude them from gun ownership.

**Rep. Keiser:** There are control substances that are legal. I assume if you have legal possession of controlled substance, you can have a gun. If you are in possession illegally of a controlled substance, can you have a gun on your possession?

**Peterson:** No. If you're in illegal possession and a firearm, not a patient, don't qualify as a patient, and you have possession, no. I just want clarity that medical marijuana patients are not criminals and allowed to have firearm ownership.

**Rep. Keiser:** I understand you're in crime status because of an illegal possession of a drug, but is it then a crime to also possess a gun at that same point?

**Peterson:** Going to have to defer to the AGs office on that.

**Rep. Keiser:** Can you be charged for 2 different crimes at that time or is it just illegal possession?

**Chairman Porter:** During your research, did you find out info on current conceal and carry process and the background checks in order to maintain reciprocity in the 40 states we have reciprocity with? If we adopted this language, would it put that reciprocity at risk with other states we have reciprocity with?

**Peterson:** Having possessed 9 concealed weapons permits, and having been the person to make the calls between Colorado and ND to help put together reciprocity years ago regarding concealed weapons permits, we're not addressing concealed weapon permit. That may be an issue later but I don't believe it should have a reciprocity with other states. This is a patient rights issue.

**Chairman Porter:** questions? In support?

**13:00**

**John Bailey, Committee for Compassionate Care:** in favor of HB 1148. We don't believe qualifying for a medical marijuana card in ND that we should have to surrender our right to protect ourselves and families. Most of us being in a disabled state, would like to exercise our right. This is the reason I will not participate in the medical marijuana program even though I'm fighting for it. I'm in full favor of this bill. We're asking in this bill that ND stand behind all citizens, disabled, able bodied, using and not using medicine. We're not addressing the federal issue, right to purchase, but for ND to stand behind its citizens. ATF and E Form 4473, wording changed at least twice in last 3 years. When you read the question pertaining to marijuana use, simply possessing a marijuana card is viewed by the Federal government as intent to use. With a medical marijuana card in possession you cannot truthfully fill out a Form 4473. 2014, Hawaii put out an order for marijuana card holders to turn in their weapons. 2 citizens did. Those 2 citizen's weapons were returned to them later as the Federal government refused to prosecute, 10<sup>th</sup> amendment states' rights. Rep. Keiser you asked about other states in the program. Alaska, they're open and liberal with their gun laws, and Missouri has implemented rights to protect its medical marijuana card holders and citizens of their state. Legality? I'm legally allowed to possess a controlled substance due to my condition, legally allowed to possess a firearm. If a person was in illegal possession of a controlled substance, then I would deem that person would be illegal in possession of a firearm. I think it's called having possession of a firearm in the course of a felony if a felonious charge. Creating a false assurance- I don't see that, I see this as an affirmation that ND will support their citizens giving them the assurance.

**Chairman Porter:** questions? Further testimony in favor?

19:17

Craig Roe, Kindred, ND, firearms instructor for State of ND: I also hold a federal firearms license to buy and sell guns. Form 4473 form they've made it very specific that medical marijuana is still illegal in federal law. The guns would have to be confiscated if they found out who already had medical marijuana cards. This bill would protect the firearms you already have but you'd have trouble getting through Form 4473 unless you lie. I would like to see this pass as a way to secure my firearms.

**21:37**

**Rep Heinert:** As a certified instructor for the State of ND, is there anything in that dialogue that would restrict a person from getting a concealed firearms license if they have a medical marijuana card?

**Craig Roe:** I don't believe so.

**Chairman Porter:** When you get a card from the state after completing the concealed weapons course, you get an NTN number that you've gone through background checks, wouldn't that be in conflict with this law in regards to our concealed weapons permit?

**Craig Roe:** It's nice to have that concealed weapons permit with that NTN number, it does fast track your purchase of a firearm, although you still have to complete the Form 4473. By checking yes to any of those questions, would end that right there.

**Chairman Porter:** further support?

**Andrew Bornemann: 23:50** Whether or not under current law, possessing a firearm and possession a controlled substance is a crime- I'd like to point out, ND Century Code 19-03.1-23.1 Increased Penalties for Aggravating Factors in Drug Offenses- people who are in illegal possession of a controlled substance. Sec.C Part 1 says the defendant had a firearm in the defendant's actual possession at the time of the offense creates a compounded or increased penalty as an aggravated factor. Yes, it's a crime, and extension of penalties.

**Chairman Porter:** questions?

**Rep. Lefor:** What protection will this bill give that current statute does not?

**Bornemann:** Medical marijuana does give you protection of being in possession of that, but it's still on the regulated substance list. Without this particular wording in law, it's a grey area. This law makes it clear you are not precluded from having that firearm specifically if you have medical marijuana card.

**Rep. Lefor:** So having it in code gives someone confidence but doesn't do anything federally?

**Bornemann:** I understand this is a federal issue as well but can't address that here. I agree. We need to make contact with the national delegation also. But we need to start here locally first.

**Vice Chairman Damschen:** If we pass this and don't specify in our concealed weapons permit ap, how will it affect our reciprocity with other states?

**Bornemann:** As I understand this bill it does not address the conceal carry side. It does not automatically say you cannot have firearms. I do not believe it would affect reciprocity with other states.

**Vice Chairman Damschen:** In other states a person that owns a gun, may have a conceal carry permit. If we don't differentiate what's going to happen in the state where there is a restriction on gun ownership. It's not really a question, I'm just voicing my concern.

**Bornemann:** ND has no reciprocity for cannabis for someone going to other states. I think it's a non-issue. Talk to the Secretary of State.

**Chairman Porter:** opposition? Closed the hearing

# **2019 HOUSE SUBCOMMITTEE MINUTES**

## **Energy and Natural Resources Subcommittee**

32400 HB 1148  
Committee Clerk Kathleen Davis

**Meeting location:** Coteau A Room, State Capitol

**Date of meeting:** 2/7/2019 3:30 PM

**Members present:** Chairman Roers Jones, Rep Bosch, Rep. Zubke, Rep. Eidson

**Others present:**

### **Topics discussed:**

- Unless otherwise provided in Title 62.1, someone who is authorized to possess medical marijuana is not precluded from possessing a firearm or dangerous weapon
- Issue is according to federal law they are specifically prohibited from possessing firearms if using marijuana or other illegal drugs
- Don't see a way we can create a state law to supersede federal law

### **Motion and vote:**

Rep. Zubke made a motion to recommend a Do Not Pass

Rep Bosch seconded.

Rep Eidson: wanted to go on record. I understand we're doing this to keep in line with Federal law. I am conflicted. It irritates me they can't get the medical marijuana paid for by their VA healthcare by something the VA says they have, but at the same time if they go outside and get it, they can't own a weapon. I'm conflicted, but understand why we're doing it.

Roll call vote: 4 yes 0 no 0 absent. Motion carried.

**Time of Adjournment** 3:37 pm

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

HB 1148 a bill relating to possession of firearms or dangerous weapons

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1148  
2/14/2019  
32719

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Kathleen Davis
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### Explanation or reason for introduction of bill/resolution:

a bill relating to possession of firearms or dangerous weapons

### Minutes:

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**Chairman Porter:** called the hearing to order.

**Rep. Roers Jones:** the person applying for a firearm has to indicate on the application that they do not use marijuana or other drugs. The committee has a problem with people lying on that firearms application. For that reason we recommend a Do Not Pass.

**Vice Chairman Damschen:** Second

**Rep Keiser:** was there any discussion about leaving it in play subject to the federal law change? What happens if the feds change the laws and we don't meet for 2 years, those people are precluded from possession because of a federal technicality that could change.

**Chairman Porter:** I would disagree with that. It's the federal law that precludes them. There's nothing in the state law that precludes them. If the federal law changes, then the question won't appear on the federal form and it's a non issue.

**Chairman Porter:** We have a motion and a second for a Do Not Pass on HB 1148.  
Discussion?

Roll call vote. 14 yes 0 no 0 absent. Motion carried. Rep. Zubke is carrier.

Hearing closed.

Date: 2-7-19  
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1148**

House Energy and 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 Zubke Seconded By Rep Bosch

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. Zubke	✓	
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Eidson	✓	

Total (Yes) 4 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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



Date: 2-14-19  
Roll Call Vote #: \_\_\_\_\_

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1148**

House Energy and 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 Roers Jones Seconded By Rep Damschen

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. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Zubke

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

**REPORT OF STANDING COMMITTEE**

**HB 1148: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1148 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1148**



## North Dakota House of Representatives

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

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Representative  
Josh Boschee  
District 44  
517 First Street North  
Fargo, ND 58102-4540  
C: 701-367-3513  
jboschee@nd.gov

Minority Leader

#1  
HB 1148

January 17, 2019

### HB 1148 Testimony House Energy & Natural Resources Committee

Chairman Porter and members of the House Energy & Natural Resources Committee.

House Bill 1148 was introduced at the request of several constituents who are in the process of applying for their medical marijuana card. A concern they have is that, as gun owners, they don't want their access to medical care impacting any potential issues with having a gun in their home or possession.

As responsible gun owners, they want to follow the law and have peace of mind that the presence of medical marijuana in their home or on their person, along with a gun would not create consequences. Another concern that has been raised is for a caregiver who is taking care of another person in their home to be able to legally keep their personal guns secured in their home, where they may be providing care. Such as a North Dakotan taking care of a terminally ill parent or grandparent in their own home.

While the Federal government will still have it's own standard, this statute would provide North Dakotans the assurance that accessing medical marijuana will not negatively impact their ability to possess a gun. That being said, it's important to note that the statute does not protect an individual from being charged or prosecuted for another crime just because they have legally access medical marijuana.

I appreciate the committee's consideration of this legislation and I will try my best to answer any questions committee members may have.

North Dakota House Energy and Natural Resources Committee

January 17<sup>th</sup> 2019

Chairman Porter and members of the Committee, my name is Steven James Peterson of The Committee for Compassionate Care of North Dakota.

The Committee for Compassionate Care is a patient advocacy group seeking to enable fair and reasonable access to medical marijuana in the state of North Dakota.

I am in support of Senate Bill 1148

The ACLU said regarding gun ownership by people of disabilities

- ❖ “This month, Congress repealed a rule that would have registered thousands of Social Security recipients with mental disabilities, who have others manage their benefits, [into the National Instant Criminal Background Check System](#) to prevent them from owning firearms.

The American Civil Liberties Union does not oppose gun control laws. As an organization dedicated to defending all constitutional rights, we believe the Second Amendment allows reasonable restrictions to promote public safety.

**But gun control laws, like any law, should be fair, effective and not based on prejudice or stereotype. This rule met none of those criteria.**

In this era of “alternative facts,” we must urge politicians to create laws based on reliable evidence and solid data.

The thousands of Americans whose disability benefits are managed by someone else range from young people with depression and financial inexperience to older adults with Down syndrome needing help with a limited budget. **But no data — none — show that these individuals have a propensity for violence in general or gun violence in particular.**

To the contrary, studies show that people with mental disabilities are *less* likely to commit firearm crimes than to be the [victims of violence by others](#).

Data show that young, white men are most likely to be mass shooters — the issue that politicians care about most, despite accounting for a [tiny fraction of gun violence](#). And men under 35 commit most murders. Shall we enter all young men into the national database? The statistical correlation with gun violence would be stronger.

The ACLU and 23 national disability groups did not oppose this rule because we want more guns in our community. This is about more than guns. **Adding more innocent Americans to the National Instant Criminal Background database because of a mental disability is a disturbing trend — one that could be applied to**

**voting, parenting or other rights dearer than gun ownership. We opposed it because it would do little to stem gun violence but do much to harm our civil rights.**

Patients in North Dakota using approved medical cannabis should be allowed to maintain gun ownership. We do not prevent citizens using any other medications from gun ownership.

I am available for any questions about this bill.

Steven James Peterson, District 44 Fargo North Dakota

701-936-4362 [Steven@ravenrisingllc.com](mailto:Steven@ravenrisingllc.com)