

2019 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

HB 1317

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau Room, State Capitol

HB 1317
1/17/2019
30991

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Kathleen Davis

Explanation or reason for introduction of bill/resolution:

a bill relating to the restriction on the possession of a firearm or dangerous weapon

Minutes:

Attachment 1,2,3,4,5

Chairman Porter: called the hearing to order on HB 1317.

Rep. Simons: If you prohibit one from protecting themselves in their own a public or private area (home, facility) you are found liable in our judiciary system. I've checked with legal counsel, attorneys, and have found this to be true.

Rep Heinert: If you come to my home, I tell you, you can't protect yourself in my home, then I leave and you stay and something happens to you, you can sue me?

Rep Simons: That's the way the judiciary system is working right now to my knowledge in ND. All we're doing is putting into Century Code what is already practiced in ND.

Chairman Porter: Do you have actual case law on any situations that this is the way the judicial system interpreted and acted?

Rep. Simons: Samantha Kramer does. I do not have that info. I think she'd be willing to give that to you upon request.

Andrew Kordonowy: Attachment 1

Chairman Porter: Further testimony? Any opposition?

Brennan Quintus, CEO ND Insurance Reserve Fund: Attachment 2

Rep Bosch: Can you walk me through a real world situation? An example?

Quintus: If someone is walking around a park, a gun is prohibited on the premises, and someone were to be injured on the premises as a result from a weapon or gun, this opens up another avenue for that park district that felt it was a good idea to prohibit weapons on

their premises, another avenue for them to be liable for that injury when they may not have caused the injury resulting from the weapon.

Rep Bosch: Let's say someone goes to a Larks game and an incident happens there. The Park District would be liable?

Quintus: It opens up another avenue for liability. Inviting an unnecessary liability exposure.

Chairman Porter: As an insurance reserve fund, even without this law, a political or entity, public or private, aren't going to get sued, aren't going to have to defend themselves, aren't going to have the expense of a lawsuit, and aren't going to consider settling because it's going to be cheaper in the long run than a lawsuit?

Quintus: We feel this bill adds another layer of liability.

Chairman Porter: Do you think all that looks at potential liabilities whether this passes or not and price it into their products already?

Quintus: Currently it is not. We understand if there's a valid act or event we'd end up in some legal action against

Chairman Porter: further testimony in opposition?

Katie Fitzsimmons, Director of Student Affairs, NDUS: presented Attachment 3.

Amy DeKok, legal Counsel for the ND School Boards Association: presented Attachment 4.

Matt Gardner, Greater ND Chamber: I think it's a basic infringement on property rights. We should give our businesses the opportunity to choose what they do on their properties.

Mike Rude, ND Retail Assn ND and ND Petroleum Marketers: we have concerns to this bill as to the rights of property owners. We ask for a Do Not Pass.

Christopher Dodson, Executive Director, ND Catholic Conference: this just raises too many unanswered questions. Firearms and dangerous weapons are used in this bill and the section on public gatherings. It raises questions. For schools it looks as though it would affect non-public schools because they're not allowed one of the bills earlier today and that would change, raising questions regarding this bill and new liabilities. When it comes to interpreting law, the presumption is the legislature does not engage in (inaudible) act. So you're changing the law. Are you creating new liabilities that don't exist or new causes of action that don't exist now?

Amy Copas, ND Council for Education Leaders: presented Attachment 5

Chairman Porter: questions? Further testimony in opposition?

Rep. Keiser: would it be possible for a representative of the attorney general to come forward?

Troy Seibold, chief deputy attorney general:

26:40

Rep. Keiser: There's a disconnect here, one says it's the law and one says it changes. I can be held liable in either one of those situations. This only does half of that. In ND, given our structure, we sue everyone, they all get included.

Seibold: It's not uncommon to sue everyone that was there. But doesn't dismiss the plaintiff from having to prove.

Rep. Keiser: You're not getting off that's my point. By putting this in, if no other evidence, does this become the basis for a successful lawsuit.

Seibold: it may.

Chairman Porter: further questions? Further opposition? Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau Room, State Capitol

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1/25/2019
31498

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Kathleen Davis

Explanation or reason for introduction of bill/resolution:

a bill relating to the restriction on the possession of a firearm or dangerous weapon

Minutes:

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Chairman Porter: called the hearing to order on HB 1317.

Rep. Roers Jones: Move Do Not Pass on HB 1317.

Rep. Mitskog: Second.

Chairman Porter: discussion?

Rep. Ruby: I am on the bill, but in light of the fact the school has the liability regardless, I don't see a need for it. So I will go with the recommendation.

Chairman Porter: discussion? Clerk will call the roll on HB 1317.

13 yes 0 no 1 absent. Motion carries. Rep. Mitskog is carrier.

Date: 1-25-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1317

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 Mitskog

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

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Mits Kog

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

REPORT OF STANDING COMMITTEE

HB 1317: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1317 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1317

H1
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Good morning Mr. Chairman, and committee members of the House Energy and Natural Resources committee. My name is Andrew Kordonowy and I reside within District 36. Thank you all for the opportunity allowing me to speak on House Bill 1317. I request a unanimous 'do pass' based off the rights expressed in the North Dakota State Constitution.

Article 1, Section 1 of the North Dakota Constitution. "All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed."

If the ability and tools of the individual to defend themselves is restricted or denied, then the charge to provide securities falls on the person or agency overseeing the property or location to provide those securities. Those that remove the ability to effectively provide self protection by an individual for themselves, are now responsible to protect and defend the life and liberty of those same individuals. In the event that someone is injured or killed by damages caused by a weapon or dangerous weapon, the liability for said damages falls on those that prevented the individual from self preservation and shall bear full responsibility.

Respectfully,
Andrew Kordonowy

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Testimony to the **House Energy and Natural Resources Committee**

January 17, 2019

Prepared by Brennan Quintus, CEO
North Dakota Insurance Reserve Fund

RE: House Bill 1317

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Brennan Quintus and I am the CEO of the North Dakota Insurance Reserve Fund (NDIRF). The NDIRF is a government self-insurance pool that provides liability, automobile and equipment coverage to North Dakota's political subdivisions. NDIRF membership includes all 53 counties, 338 cities, 176 school districts, and roughly 90-95% of the fire districts, ambulance districts, park districts, and other remaining political subdivisions in North Dakota.

The NDIRF opposes House Bill 1317. If enacted, this bill would create an additional and unnecessary liability exposure for North Dakota's political subdivisions beyond what is already contemplated in chapter 32-12.1 of the North Dakota Century Code. In the event of the worst case scenario of injury or death caused by a firearm or dangerous weapon on the property of a county, city, school district, park district, or other political subdivision in North Dakota, the language proposed in this bill would force local government in North Dakota to incur unnecessary defense costs and, potentially, unnecessary damage award payments. With the increased exposure that would be created if this bill were to be enacted, liability coverage contributions paid into the NDIRF by local government would potentially need to increase which would siphon away resources and tax revenues from their intended purpose of the specific public functions of political subdivisions.

Mr. Chairman and members of the committee, the NDIRF urges a do not pass recommendation on House Bill 1317.

Thank you for the opportunity to provide testimony and I would be happy to answer any questions the committee may have.

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House Energy and Natural Resources

January 17, 2019

Katie Fitzsimmons, Director of Student Affairs

701-328-4109 | katie.fitzsimmons@ndus.edu

Chair Porter and Committee Members: my name is Katie Fitzsimmons and I serve as the Director of Student Affairs for the North Dakota University System. I'm here today, representing the System Office but not the State Board of Higher Education, in opposition to HB 1317. The bill would place liability of an injury or death on a property owner, if the property owner prohibited firearms on the premises. We have concerns about the vague wording and effect of the bill.

First, the proposed language is ambiguous and does not provide sufficient guidance for whether public entities like the NDUS would be covered by this new section. This is despite the potential impact on the public purse to defend lawsuits and pay judgments. There is not a fiscal note estimating the costs of such impacts.

Secondly, the terms "owner", "lessee", "tenant", or "occupant" are ambiguous and are not defined in 62.1-01 of the NDCC. Because of that, it is difficult to tell which entity would be responsible in the event of an incident falling under the new section. For example, what if an organization leased space from a university to hold an event. And that organization excluded guns from the event. Is the NDUS liable? Is the organization? Are both? Does this mean that we must require all groups renting and using space to allow guns at their events, regardless of their preference? The section is not clear.

Third, securing, patrolling, and controlling all areas of our NDUS campuses is simply insurmountable regardless of the policy taken. The North Dakota University System is spread out over 20,000 acres and 550+ buildings. Whether or not weapons are allowed on NDUS property, it is a tremendous amount of space to attempt to control. Furthermore, the environments are often sandwiched into neighborhoods and urban areas of the community. The campuses are not isolated and one cannot simply close a door to them, like a typical business or the Capitol building. If two community members were to engage in an armed confrontation and stumble onto a parking lot at an institution, and that institution maintained a prohibition of firearms on campus, would that institution be liable for the injuries incurred?

And finally, what would happen in a case of self-harm? Say a student or a staff, faculty, or community member chooses to take his or her own life with a firearm on a campus that prohibited firearms or dangerous weapons. Is the campus now responsible for a wrongful death claim?

I respectfully request a do not pass on HB 1317 or I respectfully request an amendment similar to 62.1-02-05 subsection 4, which would exempt the NDUS from liability under this new section. I thank you for your time and am available to answer your questions to the best of my ability. Thank you.



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Testimony of Amy L. DeKok

House Energy and Natural Resources Committee

January 17, 2019

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Amy De Kok. I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents all operating North Dakota school districts and their governing boards. I am here today testifying in opposition to HB 1317.

The role played by our public schools in the lives of children and the communities they serve is critical and essential, and quite simply, cannot be overstated. While public school's first responsibility to its students may be academic, the job does not end there. Their role is much broader. The school's primary role is to help each student achieve his or her maximum academic potential. In addition to that, public schools play an important part in teaching students how to form solid and appropriate social relationships. Public schools not only play a vital role in our children's academic and social development, but they also provide a significant contribution to the general improvement of their respective communities. The public school system has long been thought of as the bedrock of a community. Public schools provide a place for the community to meet and discuss important issues, as well as opportunities to foster unity and common goals. Moreover, the public school system in a given geographic location is generally one of the largest employers of the citizenry, especially in smaller communities.

Public schools provide these important and essential services to the public on limited budgets that are especially sensitive to economic factors, population rates, enrollment numbers, and the like. If a public school, already operating on a limited budget sensitive to various factors, is hit with several civil judgments that it must satisfy, the result can be devastating and can literally mean the closing of schools. In that scenario, which can easily become a reality for a school district in North Dakota, the effect on the community would be significant.

NDSBA believes HB 1317 would unnecessarily and significantly increase the liability of public schools already vulnerable to limited budgets, which could impact the vital services our schools provide to students and communities.

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For these reasons, NDSBA urges a do not pass recommendation from this Committee on HB 1317.

I'd be happy to answer any questions. Thank you.



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Testimony in Opposition to HB 1317 – Liability risk

We spent this morning discussing bills 1325 and 1310. Both bills offering to this committee a philosophical challenge – do we value the fundamental right of an individual to carry a gun when they've obtained a class 1 or a constitutional conceal and carry permit *anywhere* even when that location could potentially be a school - against our fundamental need to ensure the safety of our students in our schools.

This bill, however, takes an interesting approach of suggesting that, for example, a school may be held liable if a horrific act occurred such as an active shooter event in our schools. If that school did not allow guns on the premises by any individual and something did happen, then the injury or death could at the liability of the school who was trying to protect their students by keeping guns OFF of their campuses. Schools utilize and rely upon active shooter training groups that come into our schools and continually say that the more access we allow for guns in our schools, the greater the likelihood we will have a shooting event. Do you want to limit shootings? We continue to indicate that supporting qualified trained peace officers to protect our students is the best solution. Allow me to be clear – I get it that most all individuals carrying guns – maybe even 95% or even 99% of them are great people who would NEVER do anything. However, what about the 1%. What if that 1% has a conceal and carry. What if that 1% does something diabolical? That is now then the fault of the school?? That is a concept that is of real concern. Further, if guns are allowed on the premises and something does happen with an approved gun who is liable? Liability concerns have been high on the radar of our organization throughout this conversation for the past 6+ years.

This bill language is currently being debated in Kansas as well and there is tremendous concern being expressed in Kansas just as I am here today. School leaders throughout the state or North Dakota are NOT at all comfortable with the notion that their schools would be liable if the unthinkable occurs. As mentioned this morning in testimony on HB 1310 and 1325– decisions about what is best for school have been made without consulting with, or honoring recommendations from the School Safety Partner coalition, school leaders, or other groups that work for and with students – and we think that circling back and having these conversations will ensure that the interest of students and all staff in schools will be best served. We hope the members of this committee share this sentiment and send forth a DO NOT PASS recommendation for HB 1117.