

**2019 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1326**

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1326  
1/17/2019  
30992

- Subcommittee  
 Conference Committee

Committee Clerk: Kathleen Davis

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

a bill relating to the definition of machine gun, submachine gun, or fully automatic rifle

### Minutes:

Attachment 1

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

**Rep. Ertelt:** presented Attachment 1.

**3:40**

**Rep. Devlin:** You're essentially saying there's a federal regulation that prohibits the use of bump stocks, challenged in court but you're saying we can pass this and it'll override the federal regulation?

**Rep. Ertelt:** The federal regulation won't be in effect until the end of March. And because it's federal doesn't make it constitutional. This would uphold it in our state. We can't continually let the federal government take on constitutional action and do nothing about it.

**Rep. Devlin:** If the courts overrule it then you won't need this law, then you'll be allowed to have them? You're saying state law can override federal regulation.

**Rep. Ertelt:** This doesn't concern interstate commerce. I do believe what we protect in the state for our right to keep and bear arms applies to those within our state. To assert that right on the state level, I don't believe there's any conflict with the ban. Unless they're able to enforce at the state level it won't be applied.

**Chairman Porter:** We take our oath and take an allegiance to the United States of America. Do you think it's possible to a law enforcement officer, who has taken the same oath, to tell them to ignore a certain set of law, or the federal government or certain functions of their job?

**Ertelt:** I do.

**Rep Heinert:** Let's say a year from now this passes both chambers and becomes law, and next summer you're stopped with a bump stock by a local law enforcement officer, do you think you're exempt from being arrested for using that or having in your possession?

**Rep. Ertelt:** yes

**Rep Heinert:** You don't think you can be taken to federal court by a local law enforcement office for possession of that bump stock?

**Rep. Ertelt:** I wouldn't say you can't be taken to court, so the answer would be no.

**Chairman Porter:** He means arrested and charged and taken to federal court.

**Rep. Ertelt:** I believe that's possible.

**Raheem Williams, ND Young Republicans:** We have a system of federalism. Bump stock regulation was never voted on by anyone or signed into law. It's an affront to the democratic process.

**Chairman Porter:** I appreciate your opinion on the fact that this is an executive order. Do you know, at the Supreme Court level, if they have thrown out every executive order when it reaches them because it was never voted on by Congress.

**Williams:** Absolutely not, but to my understanding, that courts have been fairly clear about executive order not being law. That's why this is currently being contested in courts as Rep. Ertelt has stated.

11:10

**Andrew Bornemann:** speaking in favor of the bill. By passing this bill, it simply says bump stocks are or are not legal to Federal law in our state. It simply says bump stocks are not machine guns. That implies someone not prohibited from having a different weapon is not prohibited from having these too, but doesn't address if they're federally prohibited or not. To Rep. Devlin's comments, I think there's a lot of instances where we do go against federal law. Medical marijuana is legal in ND and not federally. You can get charged in federal court for possessing even if it's legal in ND. I don't think making a law in ND that doesn't exactly line up with federal law is a major problem. We need to go back to the Constitution of the US where it says all powers not vested in the constitution of the US government is reserved to the states or the people.

**Chairman Porter:** In the 10<sup>th</sup> amendment, interstate commerce belongs to the federal government. I understand where you're coming from but I think it tips on a level of irresponsibility on our part to think we're protecting someone when we really aren't and they think we are. Don't you think it would create enough question in people's mind thinking they're protected?

**Bornemann:** I don't disagree with you. Why would we pass anything less restrictive than federal government if it's potentially going to give someone a misrepresentation of what they could or could not get charged with in federal court.

**Chairman Porter:** I appreciate your answer. In honestly, the Legislature didn't pass medical marijuana.

**Bornemann:** fair point. This bill simply says they are not machine guns and I would like to see that pass.

**Chairman Porter:** Further testimony in support of HB1326? Opposition? Mr. Seibold please come up. Could you give us an overview of the intermixing of state and federal law and when they conflict and end up in federal court.

17:21

**Mr. Troy Seibold,** chief deputy Attorney General: We have many areas, firearms included where we have federal statutes certain things criminal and state statutes that make certain things criminal. When you have the dual area and statutes match up, then you know where you stand. If the state legalizes something illegal at the federal level, typically, you won't see prosecuted by a county/states attorney in State District Court but doesn't mean you're not still subject to federal indictment in federal court. Federally you look at higher minimum sentences, mandatory sentences much harsher. There's prosecutorial discretion so we don't always know if the US attorney office will prosecute you or not. We can't speak to that but it's possible. Just because you decriminalize something at the state level doesn't mean that a ND citizen wouldn't be subject to federal prosecution in federal court with federal law. When it comes to medical marijuana we've gone back and forth what the feds will do. There's a different viewpoint under the Trump administration that there was under the Obama administration. It boils down to its still illegal at the federal level and just because someone is not being prosecuted this week doesn't mean someone won't next week.

**Chairman Porter:** Questions? Closed the hearing.

**2019 HOUSE SUBCOMMITTEE MINUTES**  
**Energy and Natural Resources Subcommittee**

HB 1326      32404

Committee Clerk, Kathleen Davis

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

**Date of meeting:**    2/7/2019      3:50 PM

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

**Others present:** Casey Miller, Chief Agent with BCI

**Topics discussed:**

- this bill basically adds to the end of the definition of machine gun, submachine gun, or fully automatic rifle does not include an attachment that uses the recoil of a firearm to fire shots in rapid succession.
- If we were to pass this bill it would offer some level of protection who currently own bumpstocks and want to continue to own. They still would not be able to attach to a gun or use them in any way once the Executive Order goes into effect
- The Executive Order, goes into effect March 26, 2019, includes instruction on how to destroy
- Casey Miller, BCI- stated the Executive Order will not have a grandfather clause, it is you have to turn in the device to ATF and/or destroy

**Motion and vote:**

Rep. Zubke: Moved to recommend to the committee a Do Not Pass.

Rep. Eidson: Seconded.

Roll call vote was unanimous for a Do Not Pass recommendation.

**Time of Adjournment**    3:55 pm

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

HB 1326 a bill relating to the definition of machine gun, submachine gun, or fully automatic rifle

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1326  
2/14/2019  
32723

- Subcommittee  
 Conference Committee

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

a bill relating to the definition of machine gun, submachine gun, or fully automatic rifle

### Minutes:

**Chairman Porter:** called the hearing to order on HB 1326.

**Rep. Roers Jones:** Our definition of machine gun does not include an attachment that uses recoil of a firearm to fire rapid shots, basically saying a bump stock is not in the definition of machine guns, fully automatic rifle. The issue is the recent order that will go into effect March 26, 2019, the prohibits the possession of bump stocks and actually requires anyone who has one, to destroy it. Based on that we felt it wasn't appropriate to add this to the section. For that reason, I would offer a motion for a Do Not Pass.

**Rep. Eidson:** second.

**Chairman Porter:** discussion? We've had similar in past sessions and I think this is dangerous to put into our Century Code knowing something is federally illegal.

**Rep. Roers Jones:** The ATF says that it is NOT permissible to own a bump stock even after the effective date of the executive order regardless of state law.

**Rep. Ruby:** I will resist this motion. If we just lay down every time the government comes out to cut around our 2<sup>nd</sup> amendment right, then we're not doing justice to that.

**Chairman Porter:** I appreciate that, but I would tell you the rule of symbolism is to put in a resolution in urging the President to rescind his executive order or to allow the states to control this issue. When we pass a law and people think it's the law, but it's really not, we are not doing a very good service to the citizens by putting them at risk of a felony and prison.

We have a motion for a Do Not Pass on HB 1326.

Roll call vote, 13 yes 1 no 0 absent. Motion carried. Rep. Eidson is carrier.

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

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1326**

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 Eidson

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. Mitskog		
Rep. Keiser			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 #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1326**

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 Eidson

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) 13 No 1

Absent 0

Floor Assignment Rep Eidson

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

**REPORT OF STANDING COMMITTEE**

**HB 1326: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1326 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1326**

#1  
HB 1326  
1-17-19

Testimony in Support of House Bill 1326  
Rep. Sebastian Ertelt  
ND District 26

Chairman Porter and Members of the Committee,

For the record, I am Representative Sebastian Ertelt, representing North Dakota District 26.

House Bill 1326, relating to the definition of machine gun, submachine gun, or fully automatic rifle, is a protection of the right to keep and bear arms and in particular bump stocks, or similar attachments. The recent action by the ATF to ban bump stocks is in direct contradiction (and unconstitutional) to the agency's partially correct decision in 2010 that found bump stocks are not machine guns and therefore couldn't be regulated unless Congress (the law-making branch of the federal government) changed existing law, which they have not done. I say partially correct because I don't believe even Congress has the authority to ban them. Though some may argue that multiple court rulings dictate otherwise, to them I would remind that repeating a lie over and over again doesn't make it true. We must assert our state sovereignty, protect the rights of our citizens, and prevent an unconstitutional taking of their property.

As defined in section 62.1-01-01, a machine gun, submachine gun, or fully automatic rifle means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second. Semi-automatic weapons on the other hand, require a trigger reset in between each shot, even when equipped with a bump stock. Interestingly, a rubber band, belt loop, or training for a quick trigger finger can be used to produce substantially the same effect as a bump stock. Will the ATF be looking to ban those next?

Gun Owners of America and others have already filed a lawsuit seeking an injunction against the implementation of the new ATF regulations. Even Senator Dianne Feinstein, no friend to the Second Amendment, realizes that the lawsuit will likely keep the bump stock ban "tied up in court for years." Let us not sit idly by while the ATF attempts to steal the rights and property of our citizens. Let's pass this bill along with HB1309 to prevent the further erosion of the right to keep and bear arms which is guaranteed by both the Constitution of the United States of America and the Constitution of North Dakota.

Chairman Porter and members of the committee, I thank you for your time today and urge a unanimous DO PASS recommendation on House Bill 1326.