

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1505

2005 HOUSE JUDICIARY

HB 1505

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1505

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/7/05

Tape Number	Side A	Side B	Meter #
1	xx		46.3-end
1		xx	0-0.7
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

**Chairman DeKrey:** We will open the hearing on HB 1505.

**Representative Dawn Charging:** I am the sponsor of this bill (see written testimony).

Currently by statute, we can buy certain firearm in a contiguous state area, we can purchase from Montana, South Dakota and Minnesota, but if we go outside our area, we cannot. It is a matter of updating our code.

**Chairman DeKrey:** If a ND citizen was in Florida, wouldn't he be subject to FL law, and if FL wants to sell us a gun, we can do it.

**Representative Charging:** If you lived in Florida. The problem is bringing it back into ND; basically this bill is legalizing an activity that is already taking place. The Federal Firearms is monitoring.

**Representative Klemin:** This statute that we're repealing, I guess I haven't seen that.

**Representative Charging:** I'm passing that around. I did quite a bit of research on this and visited with the AG's office as well, and as attorneys you know that if we repeal a section, then there's one concern, if it's not in statute that we can purchase a gun, what happens with the Federal Firearm Act changes. The reality would be that we'd be in tandem with the federal firearms. There are very few red states, Idaho, Nebraska.

**Representative Klemin:** In these statutes...

**Representative Charging:** Chapter 62.1-02, bottom of the page, page 3.

**Chairman DeKrey:** Further testimony in support of HB 1505, opposition to HB 1505. We will close the hearing on HB 1505.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1505

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/8/05

Tape Number	Side A	Side B	Meter #
1	xx		42-49.4
Committee Clerk Signature <i>Al Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1505.

**Representative Charging:** (explained the amendments). I move the amendments.

**Representative Koppelman:** Seconded.

**Chairman DeKrey:** Motion carried.

**Representative Delmore:** I move a Do Pass as amended.

**Representative Zaiser:** Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Delmore

1505

PROPOSED AMENDMENT TO HOUSE BILL NO. 1441

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code related to sentencing alternatives.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 2 AMENDMENT.** Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor, except as provided in section 62.1-02-01. However, if an order is entered revoking a probation imposed as part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23."

Renumber accordingly

**House Amendments to HB 1505 - Judiciary Committee 02/09/2005**

Page 1, line 1, after "Act" insert "to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives; and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23 or section 62.1-02-01."

Renumber accordingly

Date: 2/8/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1505

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

Pass as Amended

Motion Made By

Rep. Delmore

Seconded By

Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes)

13

No

0

Absent

1

Floor Assignment

Rep. Delmore

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



**REPORT OF STANDING COMMITTEE**

**HB 1505: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1505 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives; and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23 or section 62.1-02-01."

Renumber accordingly

2005 SENATE JUDICIARY

HB 1505

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1505

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		1655 -4100
Committee Clerk Signature <i>Maria L. Selberg</i>			

Minutes: Relating to the purchase of certain firearms from another state.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Sen. Nick Hacker**, Dist. #42- Introduced the bill. This came from the firearms collectors who wish to purchase a collection item from another state. The current law allows you to do this in the neighboring states of ND. This is a repeal of the law.

**Sen. Trenbeath** stated that he is surprised that 62.102 12 exist at all. It is permissive language. It does not permit anything it allows something that presumable you would be allowed any way.

**Senator Hacker** sited his process on bringing this bill to the committee. Discussion of code.

**Rep. Don Dietrich**, Dist. #42 (meter 1976) As an avid hunter and outdoors man. I am also a firearms collector and have a federal firearms license and instructor. In my travels I have found a special gun that I would like to collect this bill would allow me to purchase it. Describe what the

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1505

Hearing Date March 14, 2005

current process was and what this bill would do. **Senator Triplett** was concerned that there was possible conflicts in laws that would other wise protect us? Discussed purchase process. (meter 2100)

**Terry Trainer**, Asst. Dir. of ND Assoc. of Counties (meter 2270) Gave Testimony - Att. #1 and proposed Amendment - Att. #2 **Sen. Trenbeath** stated that the amendment would track what the supreme court states.

The committee discussed the repealing of the deletion of sec. 1.

**Testimony in Opposition of the Bill**

None

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1505

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 16, 2005

Tape Number	Side A	Side B	Meter #
3	X		1270 - End
Committee Clerk Signature <i>Maria L. Selberg</i>			

Minutes: Relating to the purchase of certain firearms from another state.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee work:

**Sen. Trenbeath** read the amendment to the committee - Att. #3 Section 62.1-02-01. (meter 1280) The committee discussed how it would fit into the bill. Discussed that the amendment in the house was done wrong but this amendment would correct it according to the Supreme Courts ruling and the bill as an appealed.

**Sen. Trenbeath** made the motion to Do Pass Amendment and seconded by Sen. Nelson. All members were in favor and motion passes.

**Sen. Trenbeath** made the motion to Do Pass as Amended and **Sen. Nelson** seconded the motion. All members were in favor and motion passes.

Carrier: **Senator Hacker**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

Date: 3/16/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1505

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amendment Att 3

Motion Made By Senator Trenbeath Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath					

Total (Yes) 6 No 0

Absent 0

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

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

Date: 3/16/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1505

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Senator Trenbeath Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) \_\_\_\_\_ 6. No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment Hacker

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

REPORT OF STANDING COMMITTEE (410)  
March 23, 2005 1:50 p.m.

Module No: SR-53-5891  
Carrier: Hacker  
Insert LC: 50601.0202 Title: .0400

**REPORT OF STANDING COMMITTEE**

HB 1505, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1505 was placed on the Sixth order on the calendar.

In lieu of the amendments as printed on page 906 of the Senate Journal, Engrossed House Bill No. 1505 is amended as follows:

Page 1, line 7, overstrike "A" and insert immediately thereafter "Except as provided in section 62.1-02-01, a"

Page 1, line 12, remove "or section 62.1-02-01"

Renumber accordingly



2005 TESTIMONY

HB 1505

House Judiciary Committee  
Chairman Dukrey and committee members  
Feb 7, 2005

My name is Dawn Charging; I'm representing District 4 – west Central North Dakota.

I come before you today with House Bill 1505 – which pertains to the purchasing of certain firearms from another state.

This issue was brought to my attention by a constituent who wanted to purchase a rifle from a Wal-Mart in Wisconsin.

According to current statute, ND is considered a Red State, regarding the sales of firearms. Meaning, it is illegal for a retail business to sell a rifle or shotgun directly to a consumer due to the statute.

A private citizen may have purchased the above mentioned gun, had he contacted a ND licensed FFL dealer and paid a \$20 fee and shipping.

According to Jim Dawson, Legislative Council, it was more efficient to repeal the section, as the state will now be inline with the Federal Firearms Act –Federal Government.

Thank you for your kind consideration and I ask the committee to concur and recommend a due pass on this bill.

Dawn Charging  
District 4

## **TITLE 62.1 WEAPONS**

### **CHAPTER 62.1-01 DEFINITIONS - GENERAL PROVISIONS**

**62.1-01-01. General definitions.** As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO<sub>2</sub> gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes the Thompson contender forty-five caliber single-shot center-fire with a pistol grip or similar firearm, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].
7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
8. "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.
9. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.

10. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
11. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
12. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
13. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
14. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.
15. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
16. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell. Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

**62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime.** Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited firearm or dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or authorized firearm dealers, retained for use, or destroyed.

**62.1-01-03. Limitation on authority of political subdivision regarding firearms.** No political subdivision, including home rule cities or counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

## **CHAPTER 62.1-02 POSSESSION OF WEAPONS**

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

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, 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 release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, 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 release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

**62.1-02-02. Sale of handgun regulated - Penalty.** No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by section 62.1-02-01 from possessing a firearm. Any person who violates this section is guilty of a class A misdemeanor.

**62.1-02-03. Possession or sale of short-barreled rifle or shotgun - Penalty - Application.** A person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a class C felony. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in the course of or in connection with the officer's official duties, to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle or short-barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act [26 U.S.C. 5801-5872].

**62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment or gaming site prohibited - Penalty - Exceptions.** Any person who enters or remains in that part of the establishment that is set aside for the retail sale in an establishment engaged in the retail sale of alcoholic beverages or used as a gaming site while in the possession of a firearm or dangerous weapon is guilty of a class A misdemeanor. This section does not apply to:

1. A law enforcement officer.
2. The proprietor.
3. The proprietor's employee.
4. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.

**62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.**

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty. In addition, a municipal court judge licensed to practice law in this state, a district court judge, and a retired North Dakota law enforcement officer are exempt from the prohibition and penalty in subsection 1 if the individual is otherwise licensed to carry a firearm under section 62.1-04-03 and maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.
3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

**62.1-02-06. Discharge of firearm within city - Penalty - Application.** A person who discharges a firearm within a city is guilty of a class B misdemeanor. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity including but not limited to shooting galleries and ranges.

**62.1-02-07. Use of firearm by certain minors prohibited - Penalty.** Any parent, guardian, or other person having charge or custody of any minor under fifteen years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a class B misdemeanor.

**62.1-02-08. Illegal firearms, ammunition, or explosive materials business.**

1. A person is guilty of an offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive

material for, a person prohibited by this title from receiving it if the transferor knows or has reasonable cause to believe that such person is prohibited by section 62.1-02-01 from receiving or possessing it.

2. The offense is a class C felony if the actor:
  - a. Was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
  - b. Engaged in the forbidden transaction under circumstances manifesting the actor's readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a class A misdemeanor.

**62.1-02-09. Possession of explosive and destructive device in government building - Penalty.** A person, except for a law enforcement officer while on official business, is guilty of a class C felony if the person possesses an explosive or destructive device in a government building without the written consent of the government agency or person responsible for the management of the building.

**62.1-02-10. Carrying loaded firearm in vehicle - Penalty - Exceptions.** No person may keep or carry a loaded firearm in or on any motor vehicle in this state. Any person violating this section is guilty of a class B misdemeanor. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.
3. Any person possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the person to carry a dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a dangerous weapon concealed in that state without obtaining a similar license from that state, except while that person is in the field engaged in hunting or trapping activities.
4. Any person in the field engaged in lawful hunting or trapping of nongame species or furbearing animals.
5. A security guard or private investigator licensed to carry firearms by the attorney general.
6. Any person possessing a valid special permit issued pursuant to section 20.1-02-05.

**62.1-02-11. Possessing explosive prohibited - Exception - Penalty.** No person may have in custody, possession, or control, any nitroglycerin, dynamite, or any other dangerous or violent explosive unless the explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. Any person violating this section is guilty of a class C felony.

**62.1-02-12. Resident may purchase rifle or shotgun in contiguous state - Application - Definitions.** It is lawful for a person residing in this state, including a corporation, a limited liability company, or other business entity maintaining a place of business in this state, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state, and to receive or transport that rifle or shotgun into this state. This section does not apply nor may it be construed to affect in any way the purchase, receipt, or transportation of rifles and shotguns by

federally licensed firearms manufacturers, importers, dealers, or collectors. As used in this section, all terms have the meaning prescribed in the Gun Control Act of 1968 [Pub. L. 90-618; 18 U.S.C. 921] and the regulations promulgated thereunder as enacted or promulgated on July 1, 1985.



## **North Dakota Firearms Resources**

### **Background Check Information**

The background check agency for North Dakota is NICS.

1-877-324-6427

### **Firearms Sales Hours/Days**

Firearms can only be sold during the following hours of operation: 8:00am-10:00pm 7 days a week  
Firearms can not be sold during the following holidays: Christmas

### **North Dakota Forms**

There are no state required firearms forms for North Dakota.

### **North Dakota State Officials Contact Information**

NOTE: Firearm laws and regulations are subject to change - it is the responsibility of the Store Manager and the Sporting Goods Manager to stay up to date on all firearm regulations in their area and to forward that information to the Wal-Mart Firearms Information Center.

### **Attorney General**

Attorney General of North Dakota  
State Capitol  
600 East Boulevard Ave.  
Bismarck, ND 58505-0040  
(701) 328-3640

**Alcohol, Tobacco & Firearms**  
Bureau of Alcohol, Tobacco & Firearms  
St. Paul Field Division  
30 East Seventh Street  
Suite 1870  
St. Paul, Minnesota 55101  
(651) 726-0200  
Fax:(651) 726-0201

**Fish & Game Information**  
Game & Fish Department  
100 N. Bismarck Expressway  
Bismarck, ND 58501  
(701) 328-6300

### **Permits as Alternatives to a Background Check**

Concealed weapons permits issued on or after December 01, 1999 will now qualify as an alternative to a background check. Permits valid for five years.

### **Residents that May Purchase Firearms in Your State**

The following non-residents may purchase firearms in North Dakota:

MT, MN, SD, AK, WA, AZ, MS, TN, WV, PA, DE, NJ, CT, RI, MA, NH, ME, GA, MI, VA, AR, IA, HI, UT, IL, LA, MD, MT, NE, NM, NY, NC, OH, OK, SC, WI, WY, VT, TX, OR

North Dakota residents may purchase firearms in these states:

ND, MT, MN, SD

This applies to rifles and shotguns.

**NOTE:** You are responsible for following the laws in your state AND the state of residence of your Customer.

**Signing and Other Materials Required By Your State**

No firearms signing or printed materials are required by the state of North Dakota.

the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means -

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

#### Editor's Note

Section 921(a)(34) was enacted by Public Law 105-277 on October 21, 1998, and became effective on April 19, 1999. No subparagraph (c) was enacted in subsection (a)(33).

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 226, and amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1214; Pub.L. 93-639, § 102, Jan. 4, 1975, 88 Stat. 2217; Pub.L. 99-308, § 101, May 19, 1986, 100 Stat. 449; Pub.L. 99-360, § 1(b), July 8, 1986, 100 Stat. 766; Pub.L. 99-408, § 1, Aug. 28, 1986, 100 Stat. 920; Pub.L. 101-647, Title XVII, § 1702(b)(2), Title XXII, § 2204(a), Nov. 29, 1990, 104 Stat. 4845, 4857; Pub.L. 103-159, Title I, § 102(a)(2), Nov. 30, 1993, 107 Stat. 1539; Pub.L. 103-322, Title XI, §§ 110102(b), 110103(b), 110401(a), 110519, Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1997, 1999, 2014, 2020, 2150; Pub.L. 104-88, Title III, § 303(1), Dec. 29, 1995, 109 Stat. 943; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 658(a)], Sept. 30, 1996, 110 Stat. 3009-371; Pub.L. 105-277, Div. A, § 101(b) [Title I, § 119(a)], § 101(h) [Title I, § 115], Oct. 21, 1998, 112 Stat. 2681 - \_\_\_\_\_, 2681 - \_\_\_\_\_.)

#### § 922. Unlawful acts

(a) It shall be unlawful -

(1) for any person -

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce

any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that -

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer,

manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to -

(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the manufacture of such ammunition for the purpose of exportation; and

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Secretary;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to -

(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Secretary; and

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver -

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if -

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are \_\_\_\_\_."

Signature \_\_\_\_\_ Date \_\_\_\_\_."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

(1) is under indictment for, or has been convicted in any court of, a crime

**Testimony To The  
SENATE JUDICIARY COMMITTEE  
Prepared March 14, 2005 by the  
North Dakota Association of Counties  
Terry Traynor, Assistant Director**

**CONCERNING ENGROSSED HOUSE BILL 1505**

Chairman Traynor and members of the Senate Judiciary Committee, I am here on behalf of the North Dakota State's Attorneys Association to explain the amendment requested for this bill in the House, the somewhat different amendment that was added, and the State's Attorneys desire to correct the bill. There are several attachments to this testimony that I hope will illustrate their interests.

Attachment 1, is a copy of NDCC 62.1-02-01, now referenced in HB1505, with a particular passage highlighted. State's Attorneys have long believed that this section clearly indicates that the prohibition on firearm possession that is associated with a felony conviction (subsection 1) is NOT removed by the fact that the offender served less than one year of incarceration.

This interpretation was challenged in 2004 in the case State v. Buchholz (Attachment 2). The trial court agreed with the defendant that the firearm prohibition no longer applied.

While the case had been appealed to the Supreme Court, the State's Attorney Association felt it extremely important that this issue be addressed statutorily if the trial court decision should be upheld. To that end, they proposed an amendment (Attachment 3) to HB1505. Working with several assistant attorneys' general, they arrived at language that they felt duplicated the prohibition in 62.1-02-01 in the section (12.1-32-02) referenced in the trial court challenge.

Although the committee adopted the State's Attorney amendment, as you can see from the engrossed bill, the final version of the amendment provided in a completely different result. The bill now appears to prohibit the reduction of a felony conviction by action of law in the case of a firearm violation – clearly not the intention of the State's Attorneys.

Ironically, the Supreme Court decided State v. Buchholz on February 16<sup>th</sup> of this year, and overturned the trial court decision, upholding the long-held interpretation of the statute. The desired amendment proposed by the State's Attorneys has become moot.

Since section 1 of HB1505 does not accomplish the State's Attorneys' original goal, since that goal is not longer critical, and because the apparent result of the section is something no one requested, I am here to suggest removal of section 1 of the bill. Thank you Mr. Chairman. I would be pleased to try to answer any questions the committee may have.

## Attachment 1

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

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, 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 release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, 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 release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.





**North Dakota Supreme Court Opinions ▲ ?**

State v. Buchholz, 2005 ND 30

This opinion is subject to petition  
for rehearing.

Filed Feb. 16, 2005

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**IN THE SUPREME COURT**  
**STATE OF NORTH DAKOTA**

**2005 ND 30**

State of North Dakota, Plaintiff and Appellant

v.

Paul Buchholz, Defendant and Appellee

No. 20040118

Appeal from the District Court of Barnes County, Southeast Judicial  
District, the Honorable Mikal Simonson, Judge.

**REVERSED AND REMANDED.**

Opinion of the Court by Neumann, Justice.

H. Jean Delaney, Assistant State's Attorney, 230 4<sup>th</sup> St. NW, Rm.  
303, Valley City, N.D. 58072-2947, for plaintiff and appellant.

Richard E. Edinger, P.O. Box 1295, Fargo, N.D. 58107-1295, for  
defendant and appellee.

**State v. Buchholz**

No. 20040118

**Neumann, Justice.**

[¶1] The State appeals the district court's order discharging Paul Buchholz, finding no probable cause to believe he committed the crime of a felon in possession of a firearm in violation of N.D.C.C. § 62.1-02-01(2). We reverse and remand.

I

[¶2] On September 27, 2002, Paul Buchholz pled guilty to a class C felony, issuing a check without sufficient funds. He received a sixty-day suspended sentence and one year of unsupervised probation.

[¶3] On November 26, 2003, during execution of a search warrant, law enforcement found a rifle under the bed in a residence where Buchholz was staying. He admitted ownership and possession of the gun. Buchholz was charged with being a felon in possession of a

firearm in violation of N.D.C.C. § 62.1-02-01(2). The district court discharged Buchholz, finding he was not a "convicted felon." Section 12.1-32-02(9), N.D.C.C., provides, in part, "[a] person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor." Because of the sixty-day length of Buchholz' NSF sentence, the district court found Buchholz was not a felon.

[¶4] The State appeals, arguing whether a felony conviction has been reduced to a misdemeanor conviction is irrelevant under the clear language of N.D.C.C. § 62.1-02-01(2).

## II

[¶5] The district court held the 2001 amendment to N.D.C.C. § 12.1-32-02(9) instantaneously converts a felony conviction with a sentence of less than one year to a misdemeanor. The district court compared the 2001 amendment to the old statute in which a felony conviction could be reduced to a misdemeanor only after completing a sentence of less than one year. Therefore, the district court found no probable cause to believe Buchholz was a felon in possession of a firearm in violation of N.D.C.C. § 62.1-02-01(2). The district court incorrectly interpreted N.D.C.C. § 12.1-32-02(9).

[¶6] Our standard of review for the interpretation of criminal statutes is clearly articulated:

Construction of a criminal statute is a question of law, fully reviewable by this Court. Our primary goal in interpreting statutes is to ascertain the Legislature's intentions. In ascertaining legislative intent, we first look to the statutory language and give the language its plain, ordinary and commonly understood meaning. We interpret statutes to give meaning and effect to every word, phrase, and sentence, and do not adopt a construction which would render part of the statute mere surplusage. When a statute's language is ambiguous because it is susceptible to differing but rational meanings, we may consider extrinsic aids, including legislative history, along with the language of the statute, to ascertain the Legislature's intent. We construe ambiguous criminal statutes against the government and in favor of the defendant.

State v. Laib, 2002 ND 95, ¶ 13, 644 N.W.2d 878 (citations omitted).

[¶7] Buchholz was charged with violating N.D.C.C. § 62.1-02-01(2). The statute prohibits a person who has been convicted of a certain class of felonies from possessing a firearm for a period of five years after the date of conviction. N.D.C.C. § 62.1-02-01(2). The relevant portion of N.D.C.C. § 62.1-02-01 provides:

For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though . . . the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02.

Section 12.1-32-02(9), N.D.C.C., provides:

A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony.

[¶8] We conclude the statutory language is clear and unambiguous. A person convicted of a felony and sentenced to not more than one year, despite the immediate reduction to a misdemeanor conviction, is still initially convicted of a felony. See N.D.C.C. § 12.1-32-02(9). The 2001 amendments to N.D.C.C. § 12.1-32-02(9) merely changed the point in time when a felony conviction is reduced to a misdemeanor conviction; the fact remains that the defendant was originally convicted of a felony and that the felony is thereafter reduced. After the 2001 amendments, the reduction from a felony conviction to a misdemeanor conviction occurs immediately upon the entry of sentence. See N.D.C.C. § 12.1-32-02(9). Before the 2001 amendments, the reduction occurred after the completion of sentence and probation. See N.D.C.C. § 12.1-32-02(9) (1997).

[¶9] Section 62.1-02-01, N.D.C.C., specifically states a person is convicted of a felony even if "the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02." We do not interpret statutes under a construction that would render part of the statute mere surplusage. Bruns v. North Dakota Workers Comp. Bureau, 1999 ND 116, ¶ 16, 595 N.W.2d 298. Because Buchholz was sentenced to sixty days, his felony conviction was reduced to a misdemeanor conviction under N.D.C.C. § 12.1-32-02 (9). Accordingly, Buchholz was convicted of a felony and probable cause to believe he was a felon in possession of a firearm exists under N.D.C.C. § 62.1-02-01(2). The district court's April 2, 2004, order discharging Buchholz from the charge of felon in possession of a firearm is reversed.

### III

[¶10] Buchholz argues the district court's discharge order should be affirmed because he relied on a mistake of law.

[¶11] The district court's discharge order arose from a preliminary hearing held under Rule 5.1, N.D.R.Crim.P. We have described the function of a preliminary hearing:

The purpose of the preliminary examination is to determine if a crime has been committed and if probable cause exists requiring the accused to stand trial. The preliminary examination is not a trial nor is it a pretrial proceeding. In reality, it is a proceeding to determine if a trial should be held to determine the guilt or innocence of the accused. It is also a safety device to prevent the accused's detention without probable cause.

Dickinson Newspapers, Inc. v. Jorgensen, 338 N.W.2d 72, 75 (N.D. 1983). A preliminary hearing is not held to determine a defendant's guilt or innocence. Id. Therefore, Buchholz cannot assert a mistake of law defense to overcome the charged offense at a preliminary hearing. Whether Buchholz relied on a mistake of law is an affirmative defense and must be proven by Buchholz by a preponderance of the evidence at trial. See State v. Purdy, 491 N.W.2d 402, 411 (N.D. 1992).

#### IV

[¶12] We reverse and remand for further proceedings consistent with this opinion.

[¶13]

William A. Neumann  
Mary Muehlen Maring  
Carol Ronning Kapsner  
Dale V. Sandstrom  
Gerald W. VandeWalle, C.J.

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AH #3

**Attachment 3**  
**Proposed in the House**

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1505**

Page 1, line 1, after "Act" insert "to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives; and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor, except as provided in section 62.1-02-01. However, if an order is entered revoking a probation imposed as part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23."

Renumber accordingly

1/19/2005

## 2003-04 Exemption Requests to HB1505 Hosting Requirements

State of North Dakota  
ITD Policy and Planning

#3

Agency	Exception Request Description	Submitted	Decision	Comments
Agriculture Department	Request to host ndlvestock.com web site at Vision Technologies, Inc.	May, 2004	Disapproved	Appeared to be no technical reason why the web site could not be hosted on the State's infrastructure.
Bank of North Dakota	Installation of Segue application testing tools on BND server infrastructure	Nov, 2004	Approved	The testing software was installed on BND infrastructure in support of BND security strategies.
Department of Corrections	Request to replace server at penitentiary for manufacturing operations and inventory control	Dec, 2003	Approved	Additional security measures are required at the penitentiary due to prisoner access to the system.
Department of Health	Request to host emergency medical system ambulance driver application at Med Media, Inc.	Dec, 2003	Approved	The vendor provides technical support including a 24-hour help desk available to ambulance drivers which the State does not provide.
Department of Health	Request to host emergency medical system personnel registry application at Albertson Consulting, Inc.	July, 2004	Approved (temporary)	The Health Dept signed a one-year application development contract with the vendor which included the hosting arrangement. Hosting will be transferred to ITD at the end of that contract term in July, 2005.
Department of Human Services	Request to host Aging Services SAMS application at Synergy Software Technologies	Oct, 2003	Approved	North Dakota is one of 13 other states using the SAMS application hosted by Synergy. ITD approved this request with the condition that if a future version of the application (possibly with MMIS system migration) be capable of being hosting at ITD, the application would be migrated.