

BEFORE THE ADMINISTRATIVE RULES COMMITTEE**March 9, 2010**

Chairman Jerry Klein, Members of the Administrative Rules Committee:

The following written testimony was prepared by Ken Sorenson, Assistant Attorney General, on behalf of the North Dakota Attorney General and is submitted in response to the February 16, 2010, request of John Walstad, Legislative Council Code Revisor.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The Office of the North Dakota Attorney General first promulgated rules governing concealed weapons licenses effective September 1, 1986, pursuant to legislation that became effective in 1985. See 1985 N.D. Sess. Laws ch. 683, § 6. The present rules and amendments relate to legislation enacted by the Sixty-first Legislative Assembly, namely Senate Bill No. 2415. See 2009 N.D. Sess. Laws ch. 605; N.D.C.C. § 62.1-04-03.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

The present amendments are not directly related to any federal statute or regulation but instead implement N.D.C.C. ch. 62.1-04 in accordance with N.D.C.C. § 62.1-04-03(9), which authorizes the Attorney General to adopt any rules necessary to carry out the provisions of title 62.1.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

The Attorney General followed the statutory rulemaking procedures required under N.D.C.C. ch. 28-32. Public notice of the rulemaking was published in all official newspapers in accordance with the requirements of N.D.C.C. ch. 28-32. Notice of the rulemaking was provided to Senators Constance Triplett, Judith Lee, and Joe Miller, and Representatives Edmund Gruchalla and Todd Porter, the sponsors of Senate Bill No. 2415. A public hearing was held at the Comfort Inn in Bismarck, North Dakota, on November 19, 2009. The Attorney General issued his opinion approving the rules on December 28, 2009.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

The Attorney General did not receive any oral or written comments on the proposed amendments at the November 2009 hearing. The Attorney General received one written comment at the end of the comment period. The North Dakota Private Investigative and Security Board proposed a number of changes to the proposed administrative rules and amendments. The Board's proposed changes were not consistent with statutory requirements which cannot be changed by administrative rule. For example, one of the Board's proposed changes was to change the class 2 license age requirement from 18 to 21 years – the 18-year-old age requirement is set forth in N.D.C.C. § 62.1-04-03(1)(a). The Board also proposed changing firearms and dangerous weapons instructor certification requirements to allow individuals who have not been certified by the Attorney General, but by other state entities, to conduct the instruction and proficiency testing. N.D.C.C. § 62.1-04-03(1)(d) only authorizes the Attorney General to certify firearms and dangerous weapons instructors based upon criteria and guidelines prescribed by the director of the Bureau of Criminal Investigation. The Board also proposed allowing previous completion of testing processes for other state agencies to be sufficient for a concealed weapons license. Again, the testing requirements are established under N.D.C.C. § 62.1-04-03 and cannot be changed by administrative rule. The Board also proposed that non-resident applicants receive a North Dakota concealed weapons license if they have a license or permit issued by another state entity with equivalent requirements. The concealed firearms or dangerous weapon requirements for out-of-state residents are addressed under N.D.C.C. § 62.1-04-03.1 and may not be modified by administrative rule.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The cost of publication for the public notice was \$1,415.94. Other than staff time, there were no other costs.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

The rules and amendments relate to licenses to carry a firearm or dangerous weapon concealed and correspond with the statutory changes to N.D.C.C. § 62.1-04-03 that went into effect August 1, 2009. Changes to the statute include the establishment of two classes of licenses. An applicant for a class 1 license

must be at least twenty-one years of age and must participate in classroom instruction on weapon safety rules and North Dakota deadly force law, demonstrate evidence of familiarity with a firearm or dangerous weapon, and successfully complete an actual shooting or certified proficiency exercise. An applicant for a class 2 license must be at least eighteen years of age and must complete an open-book examination on weapon safety rules and North Dakota deadly force law. Other changes include requirements for the submission of fingerprints, disclosure of court-ordered treatment, mental health commitments, and incidents of domestic violence. The statute also authorizes the Attorney General to certify firearm or dangerous weapon instructors based upon criteria established by the director of the Bureau of Criminal Investigation.

7. Whether a regulatory analysis was required by N.D.C.C. § 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

A regulatory analysis was not required.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

A regulatory analysis or economic impact statement of impact on small entities was not required.

9. Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09. Please provide a copy if one was prepared.

A constitutional takings assessment was not required.

10. If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

These rules were not adopted as emergency rules.