

## BEFORE THE ADMINISTRATIVE RULES COMMITTEE

December 15, 2011

Chairman Kim Koppelman, Members of the Administrative Rules Committee:

The following is written testimony prepared by Phil Pfennig, Chief Agent, on behalf of the North Dakota Attorney General, Bureau of Criminal Investigation and is submitted in response to the December 2, 2011, 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-second Legislative Assembly, namely House Bill 1461, See 2011 N.D. Sess. Laws ch. 504; N.D.C.C. § 62.1-04-03; and House Bill 1269, 2011 N.D. Sess. Laws ch. 504; N.D.C.C. § 62.1-04-03.

Additionally, the rules and amendments also relate to recognized problems with the previous administrative rules as written, specifically the change in the renewal timeline.

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 rule-making procedures required under N.D.C.C. ch. 28-32. Public notice of the rule-making was published in all official newspapers in accordance with the requirements of N.D.C.C. ch. 28-32. Notice of the rule-making was provided to Representatives Todd Porter, Duane DeKrey, Jeff Delzer, Bill Devlin, Bette Grande and Senator Stan Lyson, the sponsors of House Bill 1461. Notice of the rule-making was provided to Representatives Todd Porter, Karen Karls, Bill Devlin, Lawrence Klemin and Robin Weisz and Senator Stan Lyson, the sponsors of House Bill 1269. A public hearing was held at

the Pioneer Room at the ND State Capitol on September 16, 2011. The North Dakota Attorney General issued his opinion approving the rules on October 26, 2011.

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 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 received a written comment on the proposed amendments from Representative Lawrence Klemin. The Attorney General also received one oral comment during the oral comment period from Williams County Sheriff Scott Busching. There were no comments at the public hearing.

Chief Agent Phil Pfennig received a letter dated September 12, 2011, from Representative Lawrence Klemin detailing concerns with the proposed rule changes to the concealed weapons rules (10-12).

We addressed Representative Klemin's concerns as follows:

In an effort to make the renewal process as easy as possible for the citizens of North Dakota and still allow them the best use of their concealed weapons license, BCI revised administrative article 10-12 to allow renewal applications from 180 days prior UP TO the day of expiration, with the explicit understanding that after the day of expiration, the concealed weapons card is no longer valid. Should a card-holder renew their license anytime after 90 days prior to expiration, they MUST understand that they will very likely be without a valid concealed weapons license after the expiration of their current license and until their new license is issued to them. Furthermore, the renewed license will keep the same expiration date and thus, the card holder will have in effect, lost "time" while awaiting their renewal.

Given that expiration means the concealed weapons license is no longer valid, allowing renewal after expiration creates confusion on the part of our citizenry as well as states with which North Dakota's citizens enjoy reciprocity. Failing to begin the renewal process at least 90 days prior to expiration would jeopardize the concealed weapons license holders' ability to enjoy the protections the license affords them. Renewal applications that are not submitted to law enforcement by the day of expiration will be considered invalid and destroyed. The applicant must begin the application process anew.

Current federal legislation (H.R. 822 National Right-to-Carry Reciprocity Act of 2011) is seeking to establish national reciprocity with all states concealed weapons licenses. Confusion as to when a license expires and allowing renewal after expiration may cause problems for our citizens.

While BCI regretfully is not able to issue a license on demand as is the ND DOT Drivers License Division, we strive to issue licenses as quickly as possible while still in full compliance with state and federal law. The legally mandated background checks create a bulky and laborious process that cannot be quickly expedited for issuance, unlike the process required to obtain a drivers' license.

In deference to Representative Klemin's comments, BCI created and implemented an automated renewal card reminder to be sent 200 days prior to expiration. The card details the process for renewal and highlights the 180 to 90 day window as the license holder's best option. It also assures them that they can begin the renewal process up to the day of expiration, even though their ability to carry concealed from the date of expiration until they receive their new card is compromised.

Incomplete applications will be returned to the applicant. The applicant has 20 days from the post mark to fix and return the application to BCI.

Chief Agent Pfennig received an oral comment from Williams County Sheriff Scott Busching, indicating he felt there was a conflict within section 10-12-01-12 and 10-12-01-13 of the new rules relating to instructor certification (civilian as opposed to law enforcement instructors being required to possess a valid North Dakota concealed weapons license).

The following changes (underlined) were made to the proposed rules:

- 10-12-01-12(7) "Except as otherwise provided in this chapter, a firearms or dangerous weapons instructor must possess a current valid North Dakota concealed weapons license as a requirement for certification under this section.
- 10-12-01-13(3) "Except as otherwise provided in this chapter, a firearms or dangerous weapons instructor must possess a current valid North Dakota concealed weapons license as a requirement for certification under this section.

This proposed change to the administrative rules changes would satisfy the concern raised as N.D.A.C section 10-12-01-12(3) and (4) set out that the Attorney General may certify peace officers as firearm or dangerous weapons instructors to conduct classroom instruction, administer the written examination (3) and conduct firearm and dangerous weapons familiarity demonstrations and shooting proficiency exercises (4) "who has current

certification from the North Dakota Peace Officer Standards and Training board” in methods of instruction (3) and as weapons instructors (4).

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 \$1648.90. 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 relating to licenses to carry a firearm or dangerous weapon concealed and to correspond with the statutory changes to N.D.C.C. § 62.1-04-03 went into effect April 1, 2011. Changes to the statute include additional requirements and grounds for denial of a class 1 license. Additionally, other changes went into effect regarding the renewal timeline based upon an opinion that the previous renewal timeline was unconstitutional.

7. Whether a regulatory analysis was required by North Dakota Century Code (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 these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.

These rules have no fiscal effect on state revenues or expenditures.

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

A constitutional taking assessment was not required.

11. 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.