

**LETTER OPINION  
2017-L-07**

December 14, 2017

The Honorable Todd Porter  
House of Representatives  
4604 Borden Harbor Dr SE  
Mandan, ND 58554-7961

The Honorable Rick C. Becker  
House of Representatives  
6140 Ponderosa Ave  
Bismarck, ND 58503-9156

The Honorable Shannon M. Roers-Jones  
House of Representatives  
5948 Silverleaf Dr S  
Fargo, ND 58104-7127

The Honorable Kelly M. Armstrong  
State Senate  
513 Elks Dr  
Dickinson, ND 58601-2947

Dear Representatives Porter, Becker, and Roers-Jones, and Senator Armstrong:

Thank you for your letter asking whether, under the recently passed “constitutional carry” law, a qualified person may carry a loaded gun in a vehicle under N.D.C.C. § 62.1-02-10.

**ANALYSIS**

Section 62.1-02-10, N.D.C.C., prohibits carrying a loaded firearm in certain vehicles. However, the prohibition does not apply to:

An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 with a handgun, or with a rifle or shotgun if not in the field hunting or trapping.<sup>1</sup>

During the 2017 Legislative session, the Legislature passed H.B. 1169,<sup>2</sup> referred to as the “constitutional carry bill,” which revised the concealed weapons chapter and created a new statutory provision to carry a concealed weapon. Two sections were amended to create this provision. The following was added to chapter 62.1-03 addressing handguns:

An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and has possessed for at least one year a valid driver’s license or nondriver identification card issued by the department of transportation.<sup>3</sup>

Additionally, the following language was added to N.D.C.C. § 62.1-04-02 concerning concealed weapons:

An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under this chapter and who has possessed for at least one year a valid driver’s license or nondriver identification card issued by the department of transportation may carry a firearm concealed under this chapter.<sup>4</sup>

These statutory changes in N.D.C.C. title 62.1 allow any individual who is qualified to carry a loaded handgun under a class 2 firearm and dangerous weapon license to carry without a license being issued.

Thus, your question is whether a person who meets the “constitutional carry” requirements of N.D.C.C. §§ 62.1-03-01 and 62.1-04-02 may be deemed to have a concealed weapons license and therefore carry a loaded gun in a vehicle under N.D.C.C. § 62.1-02-10(3).

The North Dakota Supreme Court states that “[w]e interpret statutes in context and in relation to others on the same subject to give meaning to each without rendering one or the other useless.”<sup>5</sup> Statutes are also construed “in a practical manner, giving consideration to the context of the statutes and the purpose for which they were

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<sup>1</sup> N.D.C.C. § 62.1-02-10(3).

<sup>2</sup> 2017 N.D. Sess. Laws, ch. 432.

<sup>3</sup> N.D.C.C. § 62.1-03-01(2)(n).

<sup>4</sup> N.D.C.C. § 62.1-04-02(2).

<sup>5</sup> *BASF Corp. v. Symington*, 512 N.W.2d 692 (N.D. 1994).

enacted.”<sup>6</sup> Whenever possible, statutes are harmonized to avoid conflict between them.<sup>7</sup> I do not find the changes made to N.D.C.C. §§ 62.1-03-01(2) and 62.1-04-02(2) that allow constitutional carry to be in conflict with N.D.C.C. § 62.1-02-10.

The prohibition against having a loaded gun in certain vehicles exempts individuals who possess a valid concealed weapons license from this state.<sup>8</sup> In addition to the changes already mentioned, 2017 H.B. 1169, added subsections 2 and 3 to N.D.C.C. § 62.1-04-04:

1. Every individual while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state and shall give it to any active law enforcement officer for an inspection upon demand by the officer. The failure of any individual to give the license to the officer is prima facie evidence the individual is illegally carrying a firearm or dangerous weapon concealed.
2. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 shall inform a law enforcement officer of the individual's possession of a concealed weapon upon the initiation of a traffic stop or any other in-person contact initiated by a law enforcement officer.
3. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 must have on one's person a valid driver's license or nondriver identification card issued by the department of transportation or a digital image of one's valid driver's license or nondriver identification card on a mobile device and shall provide the license or card to any law enforcement officer for inspection upon demand by the officer.<sup>9</sup>

Thus, even though a concealed weapons license is no longer required, an individual must still provide a valid North Dakota driver's license or nondriver identification card issued by the North Dakota Department of Transportation upon demand of law

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<sup>6</sup> *State v. Fasteen*, 740 N.W.2d 60, 63 (N.D. 2007).

<sup>7</sup> *BASF Corp. v. Symington*, 512 N.W.2d 692 (N.D. 1994).

<sup>8</sup> N.D.C.C. § 62.1-02-10(3).

<sup>9</sup> N.D.C.C. § 62.1-04-04 (emphasis added).

enforcement. It is reasonable to conclude that the required identification is in lieu of a physical class 2 concealed weapons license.<sup>10</sup>

This interpretation has the practical benefit of preserving the prohibition in N.D.C.C. § 62.1-02-10 against keeping or carrying a loaded firearm in or on any motor vehicle. As long as an individual produces a valid driver's license, and otherwise meets the requirements for constitutional carry, that individual is producing the "valid concealed weapons license" which meets the exemption under N.D.C.C. § 62.1-02-10(3). Likewise, if the individual does not have the proper identification, the prohibitions against driving with a loaded gun in a vehicle remain in place.

It is my opinion, that an individual's valid driver's license or sanctioned identification card is the equivalent of a "valid concealed weapons license" as required under N.D.C.C. § 62.1-02-10 with regard to what was previously only known as a class 2 concealed weapons license. Therefore, it is further my opinion that when an individual meets the qualifications for constitutional carry in North Dakota, a loaded gun may be stored in a vehicle but proper identification must be revealed to law enforcement upon a traffic stop or other in-person contact, as required in N.D.C.C § 62.1-04-04. This interpretation is consistent with the Legislature's intent and accomplishes the statutes' goals and objectives.<sup>11</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>12</sup>

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<sup>10</sup> The Legislature should amend N.D.C.C. § 62.1-02-10(3) to clarify its meaning.

<sup>11</sup> *Rojas v. Workforce Safety and Ins.*, 723 N.W.2d 403, 406 (N.D. 2006). (We presume the Legislature did not intend an unreasonable result or unjust consequence).

<sup>12</sup> See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).