

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1396

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1396
1/25/2021

Immunity from civil actions for ammunition manufacturers.
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(2:53) Chairman Lefor calls the hearing on HB 1396.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Lawsuits against ammunition and gun manufacturers
- Citizens right to arms

Rep Louser~District 5 introduced the bill.

Nephi J Cole~National Shooting Sports Foundation: Attachment # 3059.

Chairman Lefor closes the hearing.

Vice Chairman Keiser: Moved amendment 21.0871.01001 title 02000.

Rep Kasper second.

Voice vote Motion carried.

Additional written testimony: Attachments #3019 & 2997.

(3:15) End time. The bill was held.

Ellen LeTang, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1396

Page 1, line 2, after "for" insert "firearm or"

Page 1, line 6, after "for" insert "a firearm or"

Page 1, line 7, replace "An" with "A firearm or"

Page 1, line 10, replace "An" with "A firearm or"

Page 1, line 13, replace "an" with "a firearm or"

Page 1, line 18, replace "An" with "A firearm or"

Renumber accordingly

January 25th, 2021

RE: HB 1396

The National Shooting Sports Foundation gives supports the passage of HB 1396. We, the National Shooting Sports Foundation (NSSF), represent over 9,000 member manufacturers, retailers, distributors, and other businesses. We are the Firearm Trade Association of America.

Illegitimate lawsuits have become popular tools used to attack the lawful commerce of arms and ammunition. Companies, through no fault of their own, have been subject to lawsuits seeking to blame manufacturers for the actions of criminals. Just as auto manufacturers are not responsible for those who disobey traffic ordinances, manufacturers of firearms and ammunition are not responsible for the use of firearms inappropriately.

We appreciate the legislature addressing this issue and encourage your support for this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nephi Cole', is positioned below the 'Sincerely,' text.

Nephi Cole
Director, Government Relations-State Affairs
The National Shooting Sports Foundation

I support HB1396. The freer we are when it comes to the 2nd amendment the better. The manufacturer has no control after a product is sold, so in turn, they should have zero liability. May God guide you and bless you all!

HB 1272

The Biden administration has expressed the desire to expand the registration of firearms and accessories to include firearms his administration defines as “assault weapons” and “high-capacity magazines”. We should not have our rights change depending on who is in the presidency nor a policy memo of a federal agency like the ATF which consists of no one elected by the people. Too often gun owners need to modify, destroy, sell, or otherwise dispose of accessories to not become felons. The possession of items today, should not make you a criminal tomorrow.

The expansion of National Firearms Act will be the banning of items through the over taxation of them. It will create a tiered system with one set of items alright for the rich and elite, and another for the poor and middle class. A \$200 tax per magazine and weapon is using a tax to make items unaffordable for the majority of citizens without expressly banning them.

HB 1272 uses similar language of laws already passed in other states (Alaska, Arizona, Idaho, Montana, Kansas, Tennessee, South Dakota, Utah, and Wyoming). As such North Dakota can stand with our neighbors in determining what is appropriate for our citizens. We can preserve our freedoms, our culture, and our recreation from large population centers that do not share our views.

We have seen recently the federal agencies already do this with bump stocks successfully, as well as, unsuccessfully with pistol braces. These are things that should be reserved to our elected officials in our state legislator to determine. The successful passage of HB 1272 would help restore the powers of the states rights.

HB 1396

The Protection of Lawful Commerce in Arms Act is being targeted for repeal and HB 1396 would enact a state protection for manufacturers within North Dakota.

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1396
2/3/2021

Immunity from civil actions from ammunition manufacturers.

(11:16) Chairman Lefor calls the hearing to order.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Committee work.

Rep Louser explained amendment previously passed. (Amendment #21.0871.01001)

Rep Kasper moved a Do Pass as Amended.

Rep Stemen second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	A
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	N

Vote roll call taken Motion carried 12-1-1 & Rep Louser is the carrier.

(11:26) End time.

Ellen LeTang, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1396: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1396 was placed on the Sixth order on the calendar.

Page 1, line 2, after "for" insert "firearm or"

Page 1, line 6, after "**for**" insert "**a firearm or**"

Page 1, line 7, replace "An" with "A firearm or"

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Page 1, line 18, replace "An" with "A firearm or"

Renumber accordingly

2021 SENATE JUDICIARY

HB 1396

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1396
3/24/2021

A BILL for an Act to create and enact a new section to chapter 28-01.3 of the North Dakota Century Code, relating to immunity from civil actions for firearm or ammunition manufacturers.

Hearing called to order Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, and Larson.** [8:58]

Discussion Topics:

- North Dakota State Owned Services
- Liability as it relates to munitions

Rep. Scott Louser, Minot, ND provided testimony in favor [9:00]

Nephi Cole, National Shooting Sports Foundation provided testimony in favor [9:07]

Andrew Kordonowy, Dickinson, ND provided testimony in favor [9:18]

David Schweigert, Fargo, ND provided testimony in opposition #10634 [9:20]

Jaci Hall, North Dakota Association for Justice, provided testimony in opposition #10635 [9:31]

Hearing Adjourned [9:32]

Jamal Omar, Committee Clerk

Testimony in Opposition to House Bill 1396

Good Morning. My name is David Schweigert. I am the father of three boys and an avid hunter and gun owner. I once showed a picture of the contents of my gun safe to a colleague at a seminar on the East Coast he looked at me strange and I didn't see him the remainder of the conference. That being said, I am here to testify in opposition to House Bill 1396, as the bill will make a sport I dearly love much more dangerous to participate in.

House Bill 1396 starts with the presumption that all firearm and ammunition manufacturers are immune from civil liability for injuries in the State of North Dakota.

Imagine, a defective piece of ammunition whose casing blows up inside a gun and we can all only imagine what would happen to those around that mishap not being held responsible for any injuries that ensue from that mishap. It is preposterous, so I understand that section 4 of this piece of legislation attempts to curb some of the harshness of that reality.

I further understand that section two is in my opinion the real crux of this legislation, i.e. don't hold the gun responsible for the acts of the shooter. I get that. However, if that is the true intent of the bill why not just say that and stop. That is the law in this state now anyway. Manufacturers generally are not responsible when someone uses their product to injure another. If I intentionally drive my GMC Pickup into a crowd of strangers, everyone here would believe it would be crazy to hold GMC responsible. Not going to happen. But if the steering column was defective, different story.

Same in my opinion is true of a manufacturer of a firearm or ammunition.

Not enough to then try and give it back as section 4 does by taking away the immunity if the conditions listed in a & b apply, because you also have section 5. Section 5 goes on to change the burden of proof in a claim against a gun or ammo manufacturer. In a normal products liability action it would be by a preponderance of the evidence. This bill changes it to clear and convince evidence, but apparently that there was a violation of the statute. That too changes the standard because normally in North Dakota whether a statute is violated is only evidence of negligence, now you would have to prove by clear and convincing evidence, evidence of negligence.

I want to make certain that a manufacturer has taken the necessary steps to make my gun and ammo safe. I've just seen too many situations where short cuts were taken. And if you have a state that suddenly now there is a different standard than the rest of the country, do we become the testing ground for an ammo manufacturer, i.e. let's try this new grade of brass from China in ND. Were immune if we follow the laws in the manufacturing process.

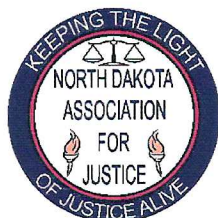
Have a big problem when any industry is given special treatment over others. It

becomes personal when it goes to goods that I love to use, but now have concern about using.

You also have a second bill I believe it is 1272 that ironically then comes along and says if a firearm or ammunition is manufactured in North Dakota entirely, not subject to interstate rules. Thus, how would an exception be created for violating the statute when it doesn't apply.

In the end I put my faith in the citizens of North Dakota thru the jury system to decide. They elected you. They make good decisions and I am uncertain why there is a need to take their decision making ability away from them or change how they are to judge a firearm and ammo manufacturer versus the manufacturer of the vehicle I drove here today.

Thank you.



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OPPOSE HB 1396

Good morning Chairman Larson and members of the Senate Judiciary Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. I am here today to urge a DO NOT PASS on HB 1396.

HB1396 is legislation trying to mimic what already exists in federal law, under 15 USC Chapter 105 "Protection of Lawful Commerce in Arms". Currently, there are federal immunity laws that protect 3rd party individuals in the event of a firearm or ammunition injury. If the intent of the legislation is to protect a 3rd party from being sued in mass shootings - then subsection 2 is the only part of the bill that is needed. According to the testimony submitted by the National Shooting Sports Foundation, this is the component of the legislation they are supportive of.

We should not create a separate set of laws in North Dakota that will only complicate an already complicated system. Adding to the complication is the umbrella of immunity for those who manufacture their own rounds and use them for their own purposes. Individuals in this state should not be considered manufacturers because they are not held to the same standard as a commercial manufacturer. No where in HB1396 does it differentiate or define what a manufacturer is.

If I build my own ammunition and my son loads the rifle and it explodes, causing harm to a third party, I should not be immune as a manufacturer because that single act of negligence is on me and my inability to build the ammunition.

Federal laws are already created to protect commercial manufacturers. HB1396 could eliminate the single acts of negligence that cause injury, such as the example above, and should not be allowed under a broad scale immunity.

The second part of HB1396 that is concerning is raising the standard of proof from a preponderance of the evidence (50.1%) to the standard of clear and convincing proof, which is basically a standard reserved for terminating parental rights and other highly important civil cases. Is it the intent of the legislature to subject an injured party to a higher standard of proof when they are injured with a firearm or ammunition?

Lastly, the requirement for the injured party to pay the legal fees of the defendant - literally tying the hands of the court - is a reach for the legislature. The court system should decide these fees, without the overreach of the legislature.

I realize this legislation is trying to protect the 2nd Amendment right of our citizens, but to create broad based immunity for manufactures is not the proper path.



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Currently, North Dakota has no commercial manufacturers in the state so to say this will create commerce is also inaccurate.

Today, I am asking you to vote Do Not Pass on HB1396. The undue consequences of this legislation will not protect someone's 2nd Amendment, but create a path for state law and federal law to become comingled and messy.

If you have any questions or would like additional information, I will be happy to answer any questions.

Thank you,

Jaclyn Hall
North Dakota Association for Justice

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1396
3/24/2021
PM Hearing

A BILL for an Act to create and enact a new section to chapter 28-01.3 of the North Dakota Century Code, relating to immunity from civil actions for firearm or ammunition manufacturers.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson. [2:45]**

Discussion Topics:

- Liability for Gun Companies
- Right to litigate torts

Senator Fors Moved Amendment LC
21.0871.02001 [2:48]

Senator Bakke Seconded the Motion
Vote Passed 7-0-0

Move to Amend HB 1396	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Luick Moved a DO PASS AS AMENDED [2:51]

Senator Myrdal Seconded the Motion
Vote Passed 7-0-0

Senator Fors Carried the Bill

Vote to DO PASS AS AMEND HB 1396	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned 2:52

Jamal Omar, Committee Clerk

March 24, 2021

CS
3/24
10/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1396

Page 1, line 6, remove " - "

Page 1, line 7, remove "**Award of fees**"

Page 1, remove lines 8 through 10

Page 1, line 11, remove "2."

Page 1, line 11, after "liable" insert "for any physical or emotional injury, physical damage, or death"

Page 1, remove lines 13 through 22

Page 2, remove lines 1 through 3

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1396, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1396 was placed on the Sixth order on the calendar.

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