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November 29, 2016

OPINION NO. 2016-09

PUBLIC SAFETY; WEAPONS; PERMITS:

NRS 202.3689 states the criteria that must be satisfied for the State of Nevada to recognize a carry concealed weapon (CCW) permit issued by another state to a nonresident. In determining whether such a permit qualifies for recognition in Nevada, the Department of Public Safety may not import the additional requirements of NRS 202.3657 governing the process by which a Nevada resident may obtain a CCW permit under Nevada law.

Mr. James M. Wright, Director
Nevada Department of Public Safety
555 Wright Way
Carson City, Nevada 89711

Dear Mr. Wright:

You have requested a formal opinion from the Office of the Attorney General pursuant to NRS 228.150 concerning the criteria that the Department of Public Safety (Department) may consider when determining whether to recognize a concealed carry weapons (CCW) permit issued by a state other than Nevada.

QUESTION

Did the Nevada Legislature intend for the Department to consider the minimum age criteria in Nevada for issuance of a Nevada CCW when determining which out-of-state CCW permits may be recognized in Nevada? Is the Department under any legal obligation to look at the minimum age criteria for out-of-state permits in accordance with NRS 202.3688?

SUMMARY CONCLUSION

No. NRS 202.3689 delineates the requirements that the holder of a CCW permit issued by another state must satisfy in order to establish that he or she is authorized to carry a concealed weapon in Nevada. The Department has not been empowered by the Legislature to add to that list the requirements for Nevada residents to obtain a CCW.

ANALYSIS

Prior to the 2015 Legislative Session, NRS 202.3689 required the Department to analyze each state's CCW laws to determine whether they were "substantially similar to or more stringent than" Nevada's CCW permit laws, thus providing for recognition of other states' CCW permits. Specifically, NRS 202.3689 provided that the Department shall on a yearly basis prepare a list of states whose "requirements for the issuance of a permit to carry a concealed firearm ... are substantially similar to or more stringent than the [Nevada] requirements" and have "an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm issued by that state and which a law enforcement officer in this State may access at all times through a national law enforcement telecommunications system." NRS 202.3689 (2007).

The Department delegated to the General Services Division (GSD) responsibility for annually preparing the list required by NRS 202.3689. As part of its analysis under the previous version of the statute, GSD staff examined three factors to determine whether another state's CCW permit laws were "substantially similar to or more stringent than" Nevada's CCW permit laws. Specifically, GSD staff looked at whether: (1) the minimum age to hold a valid permit in the issuing state is 21 years of age; (2) training, including a live-firing component, is required; and (3) the State has an electronic permit validation capability such that Nevada law enforcement could automatically determine the status of the permit at all times.

But the Legislature in 2015 amended the statute, altering the process for recognizing out-of-state CCW permits. NRS 202.3689, as amended by Senate Bill 175 and Assembly Bill 488 from the 2015 Legislative Session, requires that:

1. On or before July 1 of each year, the Department shall:
 - (a) Determine whether each state requires a person to complete any training, class or program before the issuance of a permit to carry a concealed firearm in that state.
 - (b) Determine whether each state has an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm issued by that state and which a

law enforcement officer in this State may access at all times through a national law enforcement telecommunications system.

(c) Prepare a list of states that meet the requirements of paragraphs (a) and (b).

(d) Provide a copy of the list prepared pursuant to paragraph (c) to each law enforcement agency in this state.

2. The Department shall, upon request, make the list prepared pursuant to subsection 1 available to the public.

NRS 202.3689. Based on this change to the law, the Department is currently authorized to look only for training requirements and electronic verification capability when determining out-of-state CCW permit recognition.

A companion statute, NRS 202.3688, directly addresses the circumstances under which a holder of a CCW permit issued in another state may carry a concealed firearm in Nevada. Specifically, NRS 202.3688 provides that except in limited circumstances,¹ “a person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 may carry a concealed firearm in this State in accordance with the requirements set forth in NRS 202.3653 to 202.369, inclusive.” Therefore, according to NRS 202.3688, a person who holds a CCW permit issued by a state that meets the training and electronic database requirements of NRS 202.3689 may “*carry* a concealed firearm in this State in accordance with the requirements set forth in NRS 202.3653 to 202.369, inclusive.” NRS 202.3688 (emphasis added).

The phrase “in accordance with the requirements set forth in NRS 202.3653 to 202.369, inclusive” incorporates the entirety of the concealed firearms section of NRS Chapter 202, including the statutes that govern the process for obtaining and renewing a CCW permit in Nevada. *See* NRS 202.3657, NRS 202.366, NRS 202.3662, NRS 202.3663, and NRS 202.3677. The specific requirements governing the application for and issuance of CCW permits, if applied to out-of-state visitors from approved states, would conflict with the limited requirements expressed in NRS 202.3689.

Because “in accordance with” modifies the verb “carry,” the key interpretive issue is whether the verb so modified refers solely to the applicable restrictions on the method and manner of *carrying* a concealed weapon in Nevada, or also to the applicable

¹ NRS 202.3688 does not apply as follows: “[a] person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 may not carry a concealed firearm in this State if the person: (a) Becomes a resident of this State; and (b) Has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State.” NRS 202.3688(2).

restrictions governing the *issuance* of the permit to a Nevada resident. In short, the phrase is arguably subject to two mutually exclusive interpretations. One interpretation is that Nevada's statutory "requirements" governing how, when, and where a permittee may carry a concealed weapon in Nevada apply to Nevada-recognized out-of-state CCW permit holders whenever they "carry" a concealed weapon in Nevada. Another interpretation is that NRS 202.3688(1) not only addresses the method or manner of carry, but further incorporates all of Nevada's "requirements" for obtaining a Nevada CCW permit as additional "requirements" for securing the Department's recognition of a permit issued by another state.

The application of Nevada's rules of statutory interpretation resolves the apparent tension between NRS 202.3688(1) and NRS 202.3689. In construing a statute, the courts must give effect to the legislature's intent as expressed by the plain language of the statute. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002). Here, the plain language of NRS 202.3688(1) governs the method or manner of carrying a concealed weapon under the authority of a CCW permit issued by a state other than Nevada. In this regard, the statute incorporates applicable provisions of NRS Chapter 202 only insofar as they pertain to a nonresident who already possesses a CCW permit described in NRS 202.3689. To import additional requirements from NRS 202.3657 (which governs the application process for residents to obtain a CCW permit) is to ignore that NRS 202.3689 unambiguously establishes an entirely separate process governing the recognition of nonresident permits. If the Legislature had intended to subject recognition of out-of-state CCWs to additional limitations or restrictions, it would have expressed that intention in NRS 202.3689. *See Dept. of Taxation v. DaimlerChrysler Services N.A., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005) ("Nevada law ... provides that omissions of subject matters from statutory provisions are presumed to have been intentional.").

To the extent that there is tension between NRS 202.3688(1) and NRS 202.3689, the two statutes must be construed "harmoniously with one another to avoid an unreasonable or absurd result." *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. ___, ___, 373 P.3d 66, 70 (2016) (quotation omitted). As noted above, the "requirements" language of NRS 202.3688(1) relates to the conditions under which an out-of-state CCW holder on the list may "carry" a concealed weapon in Nevada. Those requirements cannot be read out of the statutory scheme without undermining the manifest intent of the regulatory provisions of NRS Chapter 202 as they pertain to concealed weapons. For instance, the Legislature clearly meant to apply to nonresidents the same rules that govern residents with respect to how, when, and where residents may carry a concealed weapon under the authority of a Nevada CCW permit. For example, NRS 202.3667 provides that the permittee must carry the CCW permit along with proper identification when in possession of the concealed firearm. In addition, the Legislature has enacted limitations on a permittee's authority to carry a concealed weapon while on the premises of certain public buildings including airports and child care facilities. NRS 202.3673.

Furthermore, if NRS 202.3688(1) was construed to effectively import Nevada's requirements for obtaining a Nevada CCW into NRS 202.3689's minimal requirements for the recognition of out-of-state CCWs, the resulting policy outcomes would be arbitrary, if not absurd. The Department would be forced to decide whether to disapprove a CCW from any state that: does not issue CCWs via sheriffs (for instance, both Texas and Utah issue CCWs through central government agencies), NRS 202.3657; does not require fees to be deposited with the county treasurer, NRS 202.368; or does not provide immunity for state and local governments from civil liability, NRS 202.3683. It would be absurd to incorporate every requirement "set forth in NRS 202.3653 to 202.369, inclusive" to the recognition of out-of-state CCWs. It would likewise be arbitrary for the Department to select some requirements and not others based upon a subjective assessment of their relative importance.

Finally, the legislative history of NRS 202.3689 is consistent with the clear text interpretation that the statute as amended in 2015 requires two, and only two, criteria to be met for another state's CCW to be recognized in Nevada. A reading of the statutes that would add to these two requirements would conflict with the intention of the Nevada Legislature as expressed not merely in the text of the statute, but in the legislative history.²

According to the legislative history of NRS 202.3689 as originally enacted in 2007, the purpose of the statute was, in part, to allow a nonresident to carry a concealed weapon in Nevada provided that the nonresident possessed a permit issued by a state with CCW laws comparable to those of Nevada. *See Hearing on S.B. 237 Before the Senate Committee on Judiciary, 2007 Leg., 74th Sess. 2 (March 21, 2007); Hearing on S.B. 237 Before the Assembly Committee on Judiciary, 2007 Leg., 74th Sess. 22 (May 9, 2007)*. In supporting the 2015 amendment to the statute, Senator Greg Brower explained that "[r]ather than requiring [the Department] to engage in a quite laborious effort to analyze the [CCW] requirements of every other state and make a reciprocity determination, the bill simplifies the process and requires DPS to determine which states require a training course, and those states have reciprocity under this bill." *Hearing on S.B. 175 Before the Assembly Committee on Judiciary, 2007 Leg., 78th Sess. 23 (April 23, 2015)*. Further, Robert Roshak, the Executive Director of Nevada Sheriffs' and Chiefs' Association, explained that the statute was altered to remove the "substantially similar or more stringent" requirement and explained that "[a]s long as there is a training standard and there is 24/7 access to a database, that is all that is required." *Hearing on S.B. 175 Before the Assembly Committee on Judiciary, 2007 Leg., 78th Sess. 27 (April 23, 2015)*.

² Assuming there is any ambiguity in NRS 202.3689, it is appropriate to review the legislative history of that statute for guidance. *See In re Orpheus Trust*, 124 Nev. 170, 175, 179 P.3d 562, 565 (2008) ("When construing an ambiguous statute, legislative intent is controlling, and we look to legislative history for guidance.").

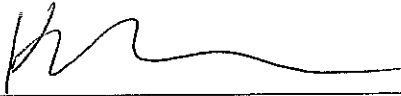
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The Department may not refuse to recognize a CCW permit from another state simply because the nonresident holder of that permit fails to meet the statutory requirements for obtaining a CCW in this State. The 2015 amendment to the statute eliminated the Department's authority to make reciprocity determinations in reference to criteria other than those described in NRS 202.3689. Consequently, the Department may not impose a minimum age requirement or insist that out-of-state firearms training include a live fire component.³

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:



KATHLEEN M. BRADY
Deputy Attorney General
Bureau of Litigation
Department of Motor Vehicles
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KMB/JLC

³ The Department also asked whether its staff is under any legal obligation to provide notice to out-of-state permit holders that they must comply with the provisions of NRS 202.3653 to NRS 202.369 as they relate to the method or manner of carrying a concealed weapon in Nevada. The Legislature has not expressly tasked the Department with informing CCW permit holders from other states of their obligations under Nevada CCW laws.