

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1498**

Introduced by

Representatives B. Koppelman, K. Koppelman, Marschall, Paulson, D. Ruby

Senators Clemens, Kannianen, Lemm, Myrdal, Vedaa

1 A BILL for an Act to create and enact a new section to chapter 62.1-02 of the North Dakota
2 Century Code, relating to brandishing a dangerous weapon; and to amend and reenact sections
3 12.1-05-06, 12.1-05-07, and 12.1-05-07.2 of the North Dakota Century Code, relating to use of
4 force in defense of property, limits on the use of force and deadly force, and immunity from civil
5 liability.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12.1-05-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-05-06. Use of force in defense of premises and property.**

10 Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or
11 upon premises, or to prevent an unlawful carrying away or damaging of property, ~~if the person~~
12 ~~using such force first requests the person against whom such force is to be used to desist from~~
13 ~~his interference with the premises or property, except that a request is not necessary if it would~~
14 ~~be useless or dangerous to make the request or substantial damage would be done to the~~
15 ~~property sought to be protected before the request could effectively be made.~~

16 **SECTION 2. AMENDMENT.** Section 12.1-05-07 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

- 19 1. An individual is not justified in using more force than is necessary and appropriate
20 under the circumstances.
- 21 2. Deadly force is justified in the following instances:
- 22 a. When it is expressly authorized by law or occurs in the lawful conduct of war.
- 23 b. When used in lawful self-defense, or in lawful defense of others, if such force is
24 necessary to protect the actor or anyone else against death, serious bodily injury,

1 or the commission of a felony involving violence. The use of deadly force is not
2 justified if it can be avoided, with safety to the actor and others, by retreat or
3 other conduct involving minimal interference with the freedom of the individual
4 menaced. An individual seeking to protect another individual must, before using
5 deadly force, try to cause the other individual to retreat, or otherwise comply with
6 the requirements of this provision, if safety can be obtained thereby. However, the
7 duty to retreat or avoid force does not apply under the following circumstances:

8 (1) A public servant justified in using force in the performance of the public
9 servant's duties or an individual justified in using force in assisting the public
10 servant need not desist from the public servant's or individual's efforts
11 because of resistance or threatened resistance by or on behalf of the other
12 individual against whom the public servant's or individual's action is
13 directed; and

14 (2) An individual who is not engaged in an unlawful activity that gives rise to the
15 need for the use of deadly force and has not provoked the individual against
16 whom the deadly force is used, unless the circumstances in subdivision b of
17 subsection 2 of section 12.1-05-03 apply, is not required to retreat within or
18 from that individual's dwelling or place of work or from an occupied motor
19 home or travel trailer as defined in section 39-01-01, unless the individual
20 was the original aggressor or is assailed by another individual who the
21 individual knows also dwells or works there or who is lawfully in the motor
22 home or travel trailer any place the individual otherwise is legally allowed to
23 be.

24 c. When used by an individual in possession or control of a dwelling, place of work,
25 motor vehicle, or an occupied motor home or travel trailer as defined in section
26 39-01-01, or by an individual who is licensed or privileged to be there, if the force
27 is necessary to prevent commission of arson, burglary, robbery, or a felony
28 involving violence upon or in the dwelling, place of work, motor vehicle, or
29 occupied motor home or travel trailer, and the use of force other than deadly
30 force for these purposes would expose any individual to substantial danger of
31 serious bodily injury.

- 1 d. When used by a public servant authorized to effect arrests or prevent escapes, if
2 the force is necessary to effect an arrest or to prevent the escape from custody of
3 an individual who has committed or attempted to commit a felony involving
4 violence, or is attempting to escape by the use of a deadly weapon, or has
5 otherwise indicated that the individual is likely to endanger human life or to inflict
6 serious bodily injury unless apprehended without delay.
- 7 e. When used by a guard or other public servant, if the force is necessary to prevent
8 the escape of a prisoner from a detention facility, unless the guard or public
9 servant knows that the prisoner is not an individual as described in subdivision d.
10 A detention facility is any place used for the confinement, pursuant to a court
11 order, of an individual charged with or convicted of an offense, charged with
12 being or adjudicated a juvenile delinquent, held for extradition, or otherwise
13 confined under court order.
- 14 f. When used by a duly licensed physician, or an individual acting at the physician's
15 direction, if the force is necessary to administer a recognized form of treatment to
16 promote the physical or mental health of a patient and if the treatment is
17 administered in an emergency; with the consent of the patient, or, if the patient is
18 a minor or an incompetent person, with the consent of the patient's parent,
19 guardian, or other person entrusted with the patient's care and supervision; or by
20 order of a court of competent jurisdiction.
- 21 g. When used by an individual who is directed or authorized by a public servant,
22 and who does not know that the public servant is not authorized to use deadly
23 force under the circumstances.

24 **SECTION 3. AMENDMENT.** Section 12.1-05-07.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12.1-05-07.2. Immunity from civil liability for justifiable use of force.**

- 27 1. An individual who uses force as permitted under this chapter is immune from civil
28 liability for the use of the force to the individual against whom force was used or to that
29 individual's estate unless that individual is a law enforcement officer who was acting in
30 the performance of official duties and the officer provided identification, if required, in
31 accordance with any applicable law or warrant from a court, or if the individual using

1 force knew or reasonably should have known that the individual was a law
2 enforcement officer.

3 2. The court shall award loss of income, reasonable attorney's fees and, court costs, and
4 disbursements incurred by the defendant in defense of any civil action brought by a
5 plaintiff if the court finds that the defendant is immune from civil liability as provided in
6 subsection 1.

7 **SECTION 4.** A new section to chapter 62.1-02 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Brandishing a dangerous weapon.**

10 Unless otherwise provided by law and subject to sections 12.1-17-04, 12.1-17-05, and
11 12.1-31-01, an individual may brandish a dangerous weapon while on property owned or leased
12 by the individual.