

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1498
(Representatives B. Koppelman, K. Koppelman, Marschall, Paulson, D. Ruby)
(Senators Clemens, Kannianen, Lemm, Myrdal, Vedaa)

AN ACT to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to brandishing a dangerous weapon; and to amend and reenact sections 12.1-05-06, 12.1-05-07, and 12.1-05-07.2 of the North Dakota Century Code, relating to use of force in defense of property, limits on the use of force and deadly force, and immunity from civil liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

1. An individual is not justified in using more force than is necessary and appropriate under the circumstances.
2. Deadly force is justified in the following instances:
 - a. When it is expressly authorized by law or occurs in the lawful conduct of war.
 - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the individual menaced. An individual seeking to protect another individual must, before using deadly force, try to cause the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. However, the duty to retreat or avoid force does not apply under the following circumstances:
 - (1) A public servant justified in using force in the performance of the public servant's duties or an individual justified in using force in assisting the public servant need not desist from the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the other individual against whom the public servant's or individual's action is directed; and
 - (2) An individual who is not engaged in an unlawful activity that gives rise to the need for the use of deadly force and has not provoked the individual against whom the deadly force is used, unless the circumstances in subdivision b of subsection 2 of

~~section 12.1-05-03 apply, is not required to retreat within or from that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless the individual was the original aggressor or is assailed by another individual who the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer any place the individual otherwise is legally allowed to be.~~

- c. When used by an individual in possession or control of a dwelling, place of work, motor vehicle, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, motor vehicle, or occupied motor home or travel trailer, and the use of force other than deadly force for these purposes would expose any individual to substantial danger of serious bodily injury.
- d. When used by a public servant authorized to effect arrests or prevent escapes, if the force is necessary to effect an arrest or to prevent the escape from custody of an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.
- e. When used by a guard or other public servant, if the force is necessary to prevent the escape of a prisoner from a detention facility, unless the guard or public servant knows that the prisoner is not an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of an individual charged with or convicted of an offense, charged with being or adjudicated a juvenile delinquent, held for extradition, or otherwise confined under court order.
- f. When used by a duly licensed physician, or an individual acting at the physician's direction, if the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered in an emergency; with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or by order of a court of competent jurisdiction.
- g. When used by an individual who is directed or authorized by a public servant, and who does not know that the public servant is not authorized to use deadly force under the circumstances.

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

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

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual was a law enforcement officer.
2. The court shall award loss of income, reasonable attorney's fees and, court costs, and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

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

Brandishing a dangerous weapon.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1498.

House Vote: Yeas 78 Nays 10 Absent 6

Senate Vote: Yeas 35 Nays 10 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State