

Introduced by

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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 12.1-05-01, 12.1-05-06, 12.1-05-07, and 12.1-05-07.2 of the North Dakota Century Code,
4 relating to justification, use of force in defense of property, limits on the use of force and deadly
5 force, and immunity from civil liability.

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

7 **SECTION 1. AMENDMENT.** Section 12.1-05-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-05-01. Justification.**

- 10 1. Except as otherwise expressly provided, justification or excuse under this chapter is a
11 defense.
- 12 2. If a person is justified or excused in using force against another, but he recklessly or
13 negligently injures or creates a risk of injury to other persons, the justifications afforded
14 by this chapter are unavailable in a prosecution for such recklessness or negligence.
- 15 3. ~~That conduct may be justified or excused within the meaning of this chapter does not~~
16 ~~abolish or impair any remedy for such conduct which is available in any civil action.~~

17 **SECTION 2. AMENDMENT.** Section 12.1-05-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **12.1-05-06. Use of force in defense of premises and property.**

20 Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or
21 upon premises, or to prevent an unlawful carrying away or damaging of property, ~~if the person~~
22 ~~using such force first requests the person against whom such force is to be used to desist from~~
23 ~~his interference with the premises or property, except that a request is not necessary if it would~~

1 ~~be useless or dangerous to make the request or substantial damage would be done to the~~
2 ~~property sought to be protected before the request could effectively be made.~~

3 **SECTION 3. AMENDMENT.** Section 12.1-05-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

6 1. An individual is not justified in using more force than is necessary and appropriate
7 under the circumstances.

8 2. Deadly force is justified in the following instances:

9 a. When it is expressly authorized by law or occurs in the lawful conduct of war.

10 b. When used in lawful self-defense, or in lawful defense of others, if such force is
11 necessary to protect the actor or anyone else against death, serious bodily injury,
12 or the commission of a felony involving violence. The use of deadly force is not
13 justified if it can be avoided, with safety to the actor and others, by retreat or
14 other conduct involving minimal interference with the freedom of the individual
15 menaced. An individual seeking to protect another individual must, before using
16 deadly force, try to cause the other individual to retreat, or otherwise comply with
17 the requirements of this provision, if safety can be obtained thereby. However, the
18 duty to retreat or avoid force does not apply under the following circumstances:

19 (1) A public servant justified in using force in the performance of the public
20 servant's duties or an individual justified in using force in assisting the public
21 servant need not desist from the public servant's or individual's efforts
22 because of resistance or threatened resistance by or on behalf of the other
23 individual against whom the public servant's or individual's action is
24 directed; and

25 (2) An individual who is not engaged in an unlawful activity that gives rise to the
26 need for the use of deadly force and has not provoked the individual against
27 whom the deadly force is used, unless the circumstances in subdivision b of
28 subsection 2 of section 12.1-05-03 apply, is not required to retreat within or
29 from that individual's dwelling or place of work or from an occupied motor-
30 home or travel trailer as defined in section 39-01-01, unless the individual
31 was the original aggressor or is assailed by another individual who the

1 individual ~~knows also dwells or works there or who is lawfully in the motor-~~
2 ~~home or travel trailer~~ any place the individual otherwise is legally allowed to
3 be.

- 4 c. When used by an individual in possession or control of a dwelling, place of work,
5 motor vehicle, or an occupied motor home or travel trailer as defined in section
6 39-01-01, or by an individual who is licensed or privileged to be there, if the force
7 is necessary to prevent commission of arson, burglary, robbery, or a felony
8 involving violence upon or in the dwelling, place of work, motor vehicle, or
9 occupied motor home or travel trailer, and the use of force other than deadly
10 force for these purposes would expose any individual to substantial danger of
11 serious bodily injury.
- 12 d. When used by a public servant authorized to effect arrests or prevent escapes, if
13 the force is necessary to effect an arrest or to prevent the escape from custody of
14 an individual who has committed or attempted to commit a felony involving
15 violence, or is attempting to escape by the use of a deadly weapon, or has
16 otherwise indicated that the individual is likely to endanger human life or to inflict
17 serious bodily injury unless apprehended without delay.
- 18 e. When used by a guard or other public servant, if the force is necessary to prevent
19 the escape of a prisoner from a detention facility, unless the guard or public
20 servant knows that the prisoner is not an individual as described in subdivision d.
21 A detention facility is any place used for the confinement, pursuant to a court
22 order, of an individual charged with or convicted of an offense, charged with
23 being or adjudicated a juvenile delinquent, held for extradition, or otherwise
24 confined under court order.
- 25 f. When used by a duly licensed physician, or an individual acting at the physician's
26 direction, if the force is necessary to administer a recognized form of treatment to
27 promote the physical or mental health of a patient and if the treatment is
28 administered in an emergency; with the consent of the patient, or, if the patient is
29 a minor or an incompetent person, with the consent of the patient's parent,
30 guardian, or other person entrusted with the patient's care and supervision; or by
31 order of a court of competent jurisdiction.

- 1 g. When used by an individual who is directed or authorized by a public servant,
2 and who does not know that the public servant is not authorized to use deadly
3 force under the circumstances.

4 **SECTION 4. AMENDMENT.** Section 12.1-05-07.2 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-05-07.2. Immunity from civil liability for justifiable use of force.**

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

18 **SECTION 5.** A new section to chapter 62.1-02 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Brandishing a dangerous weapon.**

21 Unless otherwise provided by law and subject to sections 12.1-17-04, 12.1-17-05, and
22 12.1-31-01, an individual may brandish a dangerous weapon while on property owned or leased
23 by the individual.