

WEAPONS

CHAPTER 683

HOUSE BILL NO. 1069
(Legislative Council)
(Interim Judiciary "B" Committee)

WEAPONS TITLE REVISION

AN ACT to create and enact chapters 62.1-01, 62.1-02, 62.1-03, 62.1-04, and 62.1-05 of the North Dakota Century Code, relating to the possession, sale, and use of weapons; to amend and reenact section 20.1-01-05 of the North Dakota Century Code, relating to methods of taking of game birds and animals; to repeal chapter 12.1-26 and title 62 of the North Dakota Century Code, relating to the possession, sale, and use of weapons; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the right to possess and use firearms for lawful purposes be protected from government interference, and that regulation thereof be limited to those measures necessary for public safety. It is the intent of the legislative assembly that the chief of the bureau of criminal investigation issue a license to carry a firearm concealed if the necessary criteria are met. It is further the intent of the legislative assembly that the chief may not use the criterion requiring a valid reason for carrying the firearm concealed to arbitrarily deny an application for a license.

* SECTION 2. AMENDMENT. Section 20.1-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-05. Unauthorized methods of taking game birds and game animals. Except as otherwise provided in this title, no person, for the purpose of catching, taking, killing, or raising any game birds or game animals shall may:

1. Set, lay, or prepare any trap, snare, artificial light, net, birdlime, swivel gun, or any other device;
2. Drag, in any manner, any wire, rope, or other contrivance;
or

* NOTE: Section 20.1-01-05 was also amended by section 1 of House Bill No. 1339, chapter 271.

3. Use or cause to be used, except for transportation, any floating device or apparatus operated by electricity, steam, or gasoline, or any other floating vessel;
4. Use a firearm with any kind or type of silencer on it; or
5. Carry any firearm while in or on a motor vehicle with a cartridge in the chamber.

SECTION 3. Chapter 62.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-01-01. General definitions. As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm having a barrel less than sixteen inches [40.64 centimeters] long that is not designed to be fired from the shoulder.
7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to

enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.
9. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
10. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
11. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
12. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
13. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
14. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

15. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
16. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell. Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime. Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited firearm or dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or authorized firearm dealers, retained for use, or destroyed.

62.1-01-03. Limitation on authority of political subdivision regarding firearms. No political subdivision, including home rule cities or counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

SECTION 4. Chapter 62.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of ten years from the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of five years from the date of conviction or release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North

Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.

4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended or deferred imposition of sentence in accordance with sections 12-53-13 through 12-53-19 or placed the defendant on probation.

62.1-02-02. Sale of handgun regulated - Penalty. No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by section 62.1-02-01 from possessing a firearm. Any person who violates this section is guilty of a class A misdemeanor.

62.1-02-03. Possession or sale of short-barreled rifle or shotgun - Penalty - Application. A person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a class C felony. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in the course of or in connection with the officer's official duties, to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle or short-barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act [26 U.S.C. 5801-5872].

62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment or gaming site prohibited - Penalty - Exceptions. Any person who enters or remains in that part of the establishment that is set aside for the retail sale in an establishment engaged in the retail sale of alcoholic beverages or used as a gaming site while in the possession of a firearm or dangerous weapon is guilty of a class A misdemeanor. This section does not apply to:

1. A law enforcement officer.
2. The proprietor.

3. The proprietor's employee.
4. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.

62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty.
3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

62.1-02-06. Discharge of firearm within city - Penalty - Application. A person who discharges a firearm within a city is guilty of a class B misdemeanor. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity including but not limited to shooting galleries and ranges.

62.1-02-07. Use of firearm by certain minors prohibited - Penalty. Any parent, guardian, or other person having charge or custody of any minor under fifteen years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a class B misdemeanor.

62.1-02-08. Illegal firearms, ammunition, or explosive materials business.

1. A person is guilty of an offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited by this title from receiving it if the transferor knows or has reasonable cause to believe that such person is prohibited by section 62.1-02-01 from receiving or possessing it.
2. The offense is a class C felony if the actor:
 - a. Was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
 - b. Engaged in the forbidden transaction under circumstances manifesting the actor's readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a class A misdemeanor.

62.1-02-09. Possession of explosive and destructive device in government building - Penalty. A person, except for a law enforcement officer while on official business, is guilty of a class C felony if the person possesses an explosive or destructive device in a government building without the written consent of the government agency or person responsible for the management of the building.

62.1-02-10. Carrying loaded firearm in vehicle - Penalty - Exceptions. No person may keep or carry a loaded firearm in or on any motor vehicle in this state. Any person violating this section is guilty of a class B misdemeanor. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.
3. Any person possessing a valid North Dakota concealed weapons license, except while that person is in the field engaged in hunting or trapping activities.

4. Any person in the field engaged in lawful hunting or trapping of nongame species or furbearing animals.
5. A security guard or private investigator licensed to carry firearms by the attorney general.
6. Any person possessing a valid special permit issued pursuant to section 20.1-02-05.

62.1-02-11. Possessing explosive prohibited - Exception - Penalty. No person may have in custody, possession, or control, any nitroglycerin, dynamite, or any other dangerous or violent explosive unless the explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. Any person violating this section is guilty of a class C felony.

62.1-02-12. Resident may purchase rifle or shotgun in contiguous state - Application - Definitions. It is lawful for a person residing in this state, including a corporation or other business entity maintaining a place of business in this state, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state, and to receive or transport that rifle or shotgun into this state. This section does not apply nor may it be construed to affect in any way the purchase, receipt, or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers, or collectors. As used in this section, all terms have the meaning prescribed in the Gun Control Act of 1968 [Pub. L. 90-618; 18 U.S.C. 921] and the regulations promulgated thereunder as enacted or promulgated on July 1, 1985.

SECTION 5. Chapter 62.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-03-01. Carrying handgun - Restrictions - Exceptions.

1. A handgun may be carried by a person not prohibited from possessing one by section 62.1-02-01 or any other state statute, in a manner not prohibited by section 62.1-02-10 if:
 - a. Between the hours of one hour before sunrise and one hour after sunset, the handgun is carried unloaded and either in plain view or secured.
 - b. Between the hours of one hour after sunset and one hour before sunrise, the handgun is carried unloaded and secured.
2. The restrictions provided in subdivisions a and b of subsection 1 do not apply to:
 - a. Any person possessing a valid North Dakota concealed weapons license.

- b. Any person on that person's land, or in that person's permanent or temporary residence, or fixed place of business.
- c. Any person while lawfully engaged in target shooting.
- d. Any person while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle.
- e. Any person permitted by law to possess a handgun while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair or back from those locations.
- f. Any North Dakota law enforcement officer.
- g. Any law enforcement officer of any other state or political subdivision thereof if on official duty within this state.
- h. Any armed security guard or investigator as authorized by the attorney general when on duty or going to or from duty.
- i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member.
- j. Any member of the national guard, organized reserves, state defense forces or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization.
- k. Any officer or employee of the United States duly authorized to carry a handgun.
- l. Any person engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of such person possessing, using, or carrying a handgun in the usual or ordinary course of such business.
- m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

62.1-03-02. Selling handgun to minors prohibited - Penalty. Any person who sells, barter, hires, lends, or gives any handgun to any minor is guilty of a class A misdemeanor. This section does not prohibit a person from lending or giving a handgun to a minor if the minor will be using the handgun under the direct supervision of an

adult and for the purpose of firearm safety training, target shooting, or hunting.

62.1-03-03. Copy of federal license submitted to law enforcement officials. A retail dealer licensed to sell handguns by the federal government shall send a copy of the license, within seven days after receiving it, to the chief of police of the city and the sheriff of the county in which the dealer is licensed to sell handguns.

62.1-03-04. False information prohibited. No person, in purchasing or otherwise securing delivery of a handgun or in applying for a license to carry the handgun concealed, may give false information or offer false evidence of the person's identity.

62.1-03-05. Prohibited alterations in handgun. No person may change, alter, remove, or obliterate any mark of identification on a handgun, such as the name of the maker, model, or manufacturer's number or knowingly possess a handgun on which such alterations have been made. Possession of any handgun upon which any such identification mark has been changed, altered, removed, or obliterated creates a rebuttable presumption that the possessor made the alterations.

62.1-03-06. General penalty. Any person who violates any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.

SECTION 6. Chapter 62.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-04-01. Definition of concealed. A firearm or dangerous weapon is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no requirement that there be absolute invisibility of the firearm or dangerous weapon, merely that it not be ordinarily discernible. A firearm or dangerous weapon is considered concealed if it is not secured, and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

1. Carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible;
2. Locked in a closed trunk or luggage compartment of a motor vehicle;
3. Carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not; or

4. Carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair, or back from those locations.
5. A bow and arrow, an unloaded rifle or shotgun, or an unloaded weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon commonly referred to as a BB gun, air rifle, or CO₂ gun, while carried in a motor vehicle.

62.1-04-02. Carrying concealed firearms or dangerous weapons prohibited. No person, other than a law enforcement officer, may carry any firearm or dangerous weapon concealed unless the person is licensed to do so or exempted pursuant to this chapter. For purposes of this chapter, dangerous weapon does not mean a spray or aerosol containing CS (ortho-chlorobenzamalotrile), CN (alpha-chloroacetophenone) or other irritating agent intended for use in the defense of a person.

62.1-04-03. License to carry a firearm or dangerous weapon concealed.

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
 - a. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
 - b. The applicant is not a person specified in section 62.1-02-01.
 - c. The applicant has the written approval for the issuance of such a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has attended a testing procedure conducted pursuant to rules adopted by the attorney general. The testing procedure for approval of a concealed weapons license must include an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions, and a proficiency test consisting of a course of fire to be designated by the criminal justice training and statistics division of the

- attorney general's office. The purpose of the proficiency test is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal accuracy. A weapons instructor certified by the attorney general shall conduct the testing procedure. The attorney general shall develop rules that ensure that this testing will be conducted periodically. The local agency conducting the testing may assess a charge of up to fifty dollars for conducting this testing.
- d. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
2. The sheriff is required to process the application within thirty days after the completion of the testing portion, the chief of police is required to process the application within ten working days of its receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.
3. The chief of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The license is valid for three years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the chief. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the chief of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
4. The chief of the bureau of criminal investigation may deny an application or revoke or cancel such a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.

5. The applicant may appeal a denial or revocation of this license to the district court of the applicant's county of residence.
6. The attorney general may adopt rules to carry out this title.

62.1-04-04. Producing license on demand. Every person while carrying a concealed firearm or dangerous weapon for which a license to carry concealed is required, shall have on one's person the license and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima facie evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

62.1-04-05. Penalty. Any person who violates this chapter is guilty of a class A misdemeanor.

SECTION 7. Chapter 62.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and bombs - Penalty. No person may purchase, sell, have, or possess a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases or any other federally licensed firearm or dangerous weapon unless that person has complied with the National Firearms Act [26 U.S.C. 5801-5872].

Any federal licensee who purchases, sells, has, or possesses a machine gun, submachine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases or any other federally licensed firearm or dangerous weapon for the licensee's protection or for sale must forward a copy of the licensee's federal license along with the required weapons transfer form to the licensee's local county sheriff and to the chief of the bureau of criminal investigation within five days of the receipt of those forms.

A person who violates this section is guilty of a class C felony. Upon arrest the firearm or dangerous weapon must be seized and upon conviction and motion, forfeited to the jurisdiction in which the arrest was made and the firearm or dangerous weapon may be, pursuant to court order, sold at public auction, retained for use, or destroyed.

62.1-05-02. Persons exempt from chapter. This chapter does not apply to:

1. The authorized agent and a servant of a person who has a license to purchase, sell, have, or possess a machine gun, submachine gun, fully automatic rifle, silencer, or a bomb loaded with explosives or poisonous or dangerous gases.

2. Any officer or member of a duly authorized military organization while on official duty and using the firearm or dangerous weapon issued to the officer or member by that organization.
3. A North Dakota law enforcement officer.
4. Any federal officer authorized by the federal government to have or possess a machine gun, submachine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases.

SECTION 8. REPEAL. Chapter 12.1-26 and title 62 of the North Dakota Century Code are hereby repealed.

Approved April 15, 1985