

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 68

FISCAL
NOTE

By Senators Smith, Hunt, Chapman, and Maynard

[Introduced January 11, 2023; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §55-7-22 of the Code of West Virginia, 1931, as amended, relating to
 2 use of force, including deadly force, in defense of self, real, and personal property;
 3 providing immunity from civil and/or criminal prosecution against persons lawfully using
 4 force in defensive actions; when there is no duty to retreat; and providing for the receipt of
 5 court costs, fees, and expenses for persons acting to protect self, real, and personal
 6 property, another person, or in other defined situations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ACTIONS FOR INJURIES, AND ACTIONS RELATING TO NECESSARY
DEADLY FORCE.

§55-7-22. Civil and criminal relief for persons resisting certain criminal activities; immunity
for persons resisting certain criminal activities and using permitted force and acting
within the law for the use of that force.

1 (a) *Lawful use of force.* — A lawful occupant within a home or other place of residence is
 2 justified in using ~~reasonable and proportionate~~ force, including deadly force, against an intruder or
 3 attacker to prevent a forcible entry into the home or residence or to terminate the intruder's or
 4 attacker's unlawful entry if the occupant reasonably apprehends that the intruder or attacker may
 5 kill or inflict serious bodily harm upon the occupant or others in the home or residence or if the
 6 occupant reasonably believes that the intruder or attacker intends to commit a felony in the home
 7 or residence and the occupant reasonably believes deadly force is necessary.

8 (b) A lawful occupant within a home or other place of residence does not have a duty to
 9 retreat from an intruder or attacker in the circumstances described in subsection (a) of this section.

10 (c) A person not engaged in unlawful activity who is attacked in any place he or she has a
 11 legal right to be outside of his or her home or residence may use ~~reasonable and proportionate~~
 12 force, to the degree he or she believes is necessary, against an intruder or attacker: *Provided*, That
 13 such person may use deadly force against an intruder or attacker in a place that is not his or her

14 residence without a duty to retreat if the person reasonably believes that he or she or another is in
15 imminent danger of death or serious bodily harm from which he or she or another can only be
16 saved by the use of deadly force against the intruder or attacker.

17 (d) The justified use of ~~reasonable and proportionate~~ force under this section shall
18 constitute a full and complete defense to any civil action brought by an intruder or attacker against
19 a person using such force and, the justified use of force shall constitute a full and complete
20 defense to any criminal action.

21 (e) The full and complete civil defense created by the provisions of this section is not
22 available to a person who:

23 (1) Is attempting to commit, committing, or escaping from the commission of a felony;

24 (2) Initially provokes the use of force against himself or herself, or another with the intent to
25 use such force as an excuse to inflict bodily harm upon the assailant; or

26 (3) Otherwise initially provokes the use of force against himself or herself, or another,
27 unless he or she withdraws from physical contact with the assailant and indicates clearly to the
28 assailant that he or she desires to withdraw and terminate the use of force, but the assailant
29 continues or resumes the use of force.

30 (f) The provisions of this section do not apply to the creation of a hazardous or dangerous
31 condition on or in any real or personal property designed to prevent criminal conduct or cause
32 injury to a person engaging in criminal conduct.

33 (g) Nothing in this section shall may authorize or justify a person to resist or obstruct a law-
34 enforcement officer acting in the course of his or her duty, if the law-enforcement officer is clearly
35 acting according to and within the provisions of this section.

36 (h) The court shall award reasonable attorney's fees, court costs, and all expenses
37 incurred by the defendant in defense of any civil action brought by a plaintiff, or in any criminal
38 action, if the court finds that the defendant is immune from prosecution.

39 (i) Protection of another. —The use of force by a defendant upon another person is

40 justifiable when:

41 (1) A reasonable person would believe that such deadly force is necessary to protect a
42 third person from imminent danger of death or serious bodily injury, or to prevent the commission
43 of what the defendant perceives as the commission of a felony; and

44 (2) Under the circumstances as the defendant believes them to be, the person whom he
45 seeks to protect would himself have been justified under the law in taking such action.