

1
2
3 **H. B. 2951**

4 (By Delegates Marcum, R. Phillips, Barill,
5 Eldridge, Tomblin, Stowers, Moore, L. Phillips,
6 White, Ferro and Sponaugle (all by request))

7 [Introduced March 15, 2013; referred to the
8 Committee on the Judiciary then Finance.]

9
10 A BILL to amend and reenact §55-7-22 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto two
12 new sections, designated §55-7-22a and §55-7-22b, all relating
13 to providing enhanced criminal and civil protections to
14 individuals who use force in protecting themselves, their
15 property or other individuals from certain criminal activities
16 of others.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §55-7-22 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; and that said code be amended by adding
20 thereto two new sections, designated §55-7-22a and §55-7-22b, all
21 to read as follows:

22 **ARTICLE 7. ACTIONS FOR INJURIES.**

23 **§55-7-22. Criminal and civil relief immunity for persons resisting**
24 **certain criminal activities and using permitted force**
25 **and acting within the law for the use of that force.**

1 (a) (1) A person who uses force as permitted by this section
2 is justified in using that force and is immune from criminal
3 prosecution and civil action for the use of that force, unless the
4 person against whom the force was used is a peace officer, who was
5 acting in the performance of his or her official duties and the
6 officer identified himself or herself in accordance with any
7 applicable law, or the person using force knew or reasonably should
8 have known that the person was a peace officer. As used in this
9 subsection, the term "criminal prosecution" includes arresting,
10 detaining in custody and charging or prosecuting the defendant.

11 (2) A law-enforcement agency may use standard procedures for
12 investigating the use of force, but the agency may not arrest the
13 person for using force unless it determines that there is
14 reasonable suspicion that the force that was used was unlawful.

15 (3) The court shall award reasonable attorney's fees, court
16 costs, compensation for loss of income, and all expenses incurred
17 by the defendant in defense of any civil action brought by a
18 plaintiff, if the court finds that the defendant is immune from
19 prosecution.

20 ~~(a)~~ (b) A lawful occupant within a home or other place of
21 residence is justified in using reasonable ~~and proportionate~~ force,
22 including deadly force, against an intruder or attacker to prevent
23 a forcible entry into the home or residence or to terminate the
24 intruder's or attacker's unlawful entry if the occupant reasonably

1 apprehends that the intruder or attacker may kill or inflict
2 serious bodily harm upon the occupant or others in the home or
3 residence or if the occupant reasonably believes that the intruder
4 or attacker intends to commit a felony in the home or residence and
5 the occupant reasonably believes deadly force is necessary.

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

10 ~~(c)~~ (d) A person not engaged in unlawful activity who is
11 attacked in any place he or she has a legal right to be outside of
12 his or her home or residence may use reasonable ~~and proportionate~~
13 force, to the degree he or she believes is necessary, against an
14 intruder or attacker: *Provided,* That ~~such~~ the person may use
15 deadly force against an intruder or attacker in a place that is not
16 his or her residence without a duty to retreat if the person
17 reasonably believes that he or she or another is in imminent danger
18 of death or serious bodily harm from which he or she or another can
19 only be saved by the use of deadly force against the intruder or
20 attacker.

21 ~~(d)~~ (e) The justified use of reasonable ~~and proportionate~~
22 force under this section ~~shall constitute~~ is a full and complete
23 defense to any civil action brought by an intruder or attacker
24 against a person using such force.

1 ~~(e)~~ (f) The full and complete criminal and civil defense
2 created by the provisions of this section is not available to a
3 person who:

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

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

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

14 ~~(f)~~ (g) The provisions of this section do not apply to the
15 creation of a hazardous or dangerous condition on or in any real or
16 personal property designed to prevent criminal conduct or cause
17 injury to a person engaging in criminal conduct.

18 ~~(g)~~ (h) Nothing in this section ~~shall authorize or justify~~
19 authorizes or justifies a person to resist or obstruct a
20 law-enforcement officer acting in the course of his or her duty.

21 **§55-7-22a. Protection of another.**

22 (a) The use of physical force by a defendant upon another
23 person is justifiable when:

24 (1) The defendant reasonably believes that the force is

1 necessary to protect a third person against the use or imminent use
2 of unlawful physical force by the other person; and

3 (2) Under the circumstances as the defendant believes them to
4 be, the person whom he or she seeks to protect would have been
5 justified under the law in using the protection.

6 (b) The use of deadly physical force by a defendant upon
7 another person is justifiable when:

8 (1) The defendant believes that the force is necessary to
9 protect a third person against imminent death, serious physical
10 injury, kidnapping, sexual intercourse compelled by force or
11 threat, or other felony involving the use of force, or under those
12 circumstances permitted pursuant to section twenty-two of this
13 article; and

14 (2) Under the circumstances as they actually exist, the person
15 whom he or she seeks to protect would have been justified under the
16 law in using the protection.

17 (c) A person does not have a duty to retreat if the person is
18 in a place where he or she has a right to be.

19 **§55-7-22b. Protection of property.**

20 (a) The use of physical force by a defendant upon another
21 person is justifiable when the defendant reasonably believes that
22 the force is immediately necessary to prevent:

23 (1) The commission of criminal trespass, robbery, burglary or
24 other felony involving the use of force, or under those

1 circumstances permitted pursuant to section twenty-two of this
2 article, in a dwelling, building or upon real property in his or
3 her possession or in the possession of another person for whose
4 protection he or she acts; or

5 (2) Theft, criminal mischief, or any trespassory taking of
6 tangible, movable property in his or her possession or in the
7 possession of another person for whose protection he or she acts.

8 (b) The use of deadly physical force by a defendant upon
9 another person is justifiable under subsection (a) of this section
10 only when the defendant believes that the person against whom the
11 force is used is:

12 (1) Attempting to dispossess him or her of his or her dwelling
13 otherwise than under a claim of right to its possession;

14 (2) Committing or attempting to commit a burglary, robbery or
15 other felony involving the use of force, or under those
16 circumstances permitted pursuant to section twenty-two of this
17 article, of the dwelling; or

18 (3) Committing or attempting to commit arson of a dwelling or
19 other building in his or her possession.

20 (c) A person does have a duty to retreat if the person can
21 safely retreat.

NOTE: The purpose of this bill is to provide enhanced criminal and civil protections to individuals who use force in protecting themselves, their property or other individuals from certain criminal activities of others.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§55-7-22a and §55-7-22b are new; therefore, they have been completely underscored.