

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3017**

BY DELEGATES HORNBUCKLE AND FLEISCHAUER

[Introduced March 17, 2017; Referred  
to the Committee on the Judiciary ]

1 A BILL to amend and reenact §55-7-22 of the Code of West Virginia, 1931, as amended, relating  
 2 to providing that a person when being attacked in a place that is not his or her home should  
 3 retreat instead of using deadly force when deadly force is not necessary.

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

1 That §55-7-22 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-22. Civil relief for persons resisting certain criminal activities.**

1 (a) A lawful occupant within a home or other place of residence is justified in using  
 2 reasonable and proportionate force, including deadly force, against an intruder or attacker to  
 3 prevent a forcible entry into the home or residence or to terminate the intruder's or attacker's  
 4 unlawful entry if the occupant reasonably apprehends that the intruder or attacker may kill or inflict  
 5 serious bodily harm upon the occupant or others in the home or residence or if the occupant  
 6 reasonably believes that the intruder or attacker intends to commit a felony in the home or  
 7 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  
 11 a legal right to be outside of his or her home or residence may use reasonable and proportionate  
 12 force against an intruder or attacker: *Provided*, That such person may use deadly force against  
 13 an intruder or attacker in a place that is not his or her residence ~~without a duty to retreat~~ if the  
 14 person reasonably believes that he or she or another is in imminent danger of death or serious  
 15 bodily harm from which he or she or another can only be saved by the use of deadly force against  
 16 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.

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

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

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

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

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

32 (g) Nothing in this section shall authorize or justify a person to resist or obstruct a law-  
33 enforcement officer acting in the course of his or her duty.

NOTE: This purpose of this bill is to provide that a person when being attacked in a place that is not his or her home should retreat instead of using deadly force when deadly force is not necessary.

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