

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2859

BY DELEGATES MAZZOCCHI, TULLY, FAST, PAYNTER,

BRIDGES, J. JEFFRIES AND D. JEFFRIES

[Introduced March 02, 2021; 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 use of reasonable force in defense of self, real, and personal property; providing
 3 immunity from civil and/or criminal prosecution against persons lawfully using force in
 4 defensive actions; when there is no duty to retreat; and entitlement to receive court costs,
 5 fees and damages to persons acting to protect self, real, and personal property, another
 6 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
 3 or 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
 11 a 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,*
 13 That such person may use deadly force against an intruder or attacker in a place that is not his

14 or her residence without a duty to retreat if the person reasonably believes that he or she or
15 another is in imminent danger of death or serious bodily harm from which he or she or another
16 can only be 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, 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, herself, or another, unless
27 he or she withdraws from physical contact with the assailant and indicates clearly to the assailant
28 that he or she desires to withdraw and terminate the use of force, but the assailant continues or
29 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
34 law-enforcement officer acting in the course of his or her duty, if the law-enforcement officer is
35 clearly acting according to and within the provisions of this section.

36 (h) Immunity from criminal prosecution and civil action.

37 (1) A person who uses force as described in this section is justified in using that force and
38 is immune from criminal prosecution and civil action for the use of such force, unless the person
39 against whom the force was used is a peace officer, who was acting in the performance of his or

40 her official duties and the officer identified himself or herself in accordance with any applicable
41 law, or the person using force knew or reasonably should have known that the person was a
42 peace officer. As used in this subsection, the term “criminal prosecution” includes arresting,
43 detaining in custody, and charging or prosecuting the defendant.

44 (2) A law enforcement agency may use standard procedures for investigating the use of
45 force, but the agency may not arrest the person for using force unless it determines that there is
46 probable cause that the force used was unlawful.

47 (3) The court shall award reasonable attorney’s fees, court costs, compensation for loss
48 of income, and all expenses incurred by the defendant in defense of any civil action brought by a
49 plaintiff, or in any criminal action, if the court finds that the defendant is immune from prosecution.

50 (i) Protection of another.

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

52 (A) The defendant believes that such force is necessary to protect a third person against
53 the use or imminent use of unlawful physical force by the other person; and

54 (B) Under the circumstances as the defendant believes them to be, the person whom he
55 seeks to protect would himself have been justified under the law in using such protection.

56 (2) The use of deadly physical force by a defendant upon another person is justifiable
57 when:

58 (2) The defendant believes that such force is necessary to protect a third person against
59 imminent death, serious physical injury, kidnapping, sexual intercourse compelled by force or
60 threat, or other felony involving the use of force, or under those circumstances permitted pursuant
61 to subsection (a) of this section; and

62 (3) Under the circumstances as they actually exist, the person whom he or she seeks to
63 protect would have been justified under the law in using such protection.

64 (4) A person does not have a duty to retreat if the person is in a place where he or she
65 has a legal right to be outside of his or her home or residence.

66 (j) Protection of property (including during a National Emergency, Floods, Fires, etc.)

67 (1) The use of physical force by a person upon another person is justifiable when the
68 person believes that the force is immediately necessary to prevent:

69 (A) The commission of robbery, burglary, or other felonies involving the use of force, or
70 under those circumstances permitted pursuant to subsection (a) of this section, in a dwelling,
71 building or upon real property in his possession or in the possession of another person for whose
72 protection he or she acts; or

73 (B) Theft, criminal mischief, or any trespassory taking of tangible, movable property in his
74 possession or in the possession of another person for whose protection he acts.

75 (2) The use of deadly physical force by a person upon another person is justifiable under
76 subsection (a) of this section only when the person believes that the person against whom such
77 force is used is:

78 (A) Attempting to dispossess him of his dwelling otherwise than under a claim of right to
79 its possession; or

80 (B) Committing or attempting to commit a burglary, robbery, or other felony involving the
81 use of force, or under those circumstances permitted pursuant to subsection (a) of this section,
82 of such dwelling; or

83 (C) Committing or attempting to commit arson of a dwelling or other building in his
84 possession.

85 (3) A person does not have a duty to retreat if that person is in a place where he or she
86 has a right to be outside of his or her home or residence.

NOTE: The purpose of this bill is to provide immunity from civil or criminal prosecution against persons using reasonable force in defense of self, real and personal property. The bill also includes the use of reasonable force in defensive actions protecting self, real, and personal property of another person or in other defined situations, including when there is no duty to retreat. Persons prosecuted civilly or criminally for lawful use of this reasonable force are entitled to receive court costs, fees and damages resulting from their legal and lawful defensive actions.

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