

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5439**

By Delegates Howell, Martin, Smith, Fehrenbacher,  
Willis, Barnhart, Kump, Horst, Petitto, W. Clark, and  
Campbell

[Introduced February 05, 2024; 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 to  
 2 using deadly force against an intruder or attacker in a workplace by a person not engaged  
 3 in unlawful activity if the person reasonably believes that he or she or another is in  
 4 imminent danger of death or serious bodily harm; and providing that the person may not be  
 5 terminated from employment for this action, regardless of company or employer policy.

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

**ARTICLE                    7.                    ACTIONS                    FOR                    INJURIES.**

**§55-7-22. Civil relief for persons resisting certain criminal activities; person may not be terminated from employment.**

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 a  
 11 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 an  
 13 intruder or attacker in a place that is not his or her residence without a duty to retreat if the person  
 14 reasonably believes that he or she or another is in imminent danger of death or serious bodily  
 15 harm from which he or she or another can only be saved by the use of deadly force against the  
 16 intruder or attacker: *Provided, however*, That a person who uses such deadly force against an  
 17 intruder or attacker in a workplace, may not be terminated from employment as a result of this

18 action, regardless of any company or employer policy.

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to provide that using deadly force against an intruder or attacker in a workplace by person not engaged in unlawful activity if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm; and providing that the person may not result in that person being terminated from employment for this action, regardless of company or employer policy.

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