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# WEST VIRGINIA LEGISLATURE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2008

WEST VIRGINIA  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

# ENROLLED

## Senate Bill No. 145

(Senators Love, Green, Prezioso, Sypolt, Boley, Unger, Jenkins, Bowman, Tomblin, Mr. President, Plymale, Kessler, Chafin, Wells, Oliverio, Guills, Facemyer, McKenzie, Edgell, Foster, Deem, Fanning, Barnes, McCabe, Caruth, Hunter, Helmick, Bailey, Yoder, Sharpe, Minard, White, Stollings, Hall and Sprouse, *original sponsors*)

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[Passed February 28, 2008; in effect from passage.]

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**Senate Bill No. 145**

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Kessler, Chafin, Wells, Oliverio, Guills, Facemyer,  
McKenzie, Edgell, Foster, Deem, Fanning, Barnes,  
McCabe, Caruth, Hunter, Helmick, Bailey, Yoder,  
Sharpe, Minard, White, Stollings, Hall and  
Sprouse, *original sponsors*)

[Passed February 28, 2008; in effect from passage.]

AN ACT to amend and reenact §55-7-22 of the Code of West Virginia, 1931, as amended, relating to clarifying that reasonable and proportionate force may be used to protect

one's self or another from an intruder or attacker while lawfully in one's residence or that of another; codifying the common law doctrine that a lawful occupant within a home or residence has no duty to retreat from an intruder or attacker; clarifying that the use of reasonable and proportionate force, including deadly force, may be used against an intruder or attacker by one not engaged in unlawful activity in any place other than a home or residence where the person reasonably believes the intruder or attacker intends to kill or inflict serious bodily harm; establishing that use of reasonable and proportionate force to defend oneself is a full and complete defense civilly to an action brought by an intruder or attacker based upon the use of such force; and exceptions.

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

That §55-7-22 of the Code of West Virginia, 1931, as amended, be amended and 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  
2 residence is justified in using reasonable and  
3 proportionate force, including deadly force, against an  
4 intruder or attacker to prevent a forcible entry into the  
5 home or residence or to terminate the intruder's or  
6 attacker's unlawful entry if the occupant reasonably  
7 apprehends that the intruder or attacker may kill or  
8 inflict serious bodily harm upon the occupant or others  
9 in the home or residence or if the occupant reasonably  
10 believes that the intruder or attacker intends to commit  
11 a felony in the home or residence and the occupant

12 reasonably believes deadly force is necessary.

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

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

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

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

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

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

40 (3) Otherwise initially provokes the use of force  
41 against himself, herself or another, unless he or she  
42 withdraws from physical contact with the assailant and  
43 indicates clearly to the assailant that he or she desires  
44 to withdraw and terminate the use of force, but the  
45 assailant continues or resumes the use of force.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Samuel Eckman*  
.....  
Clerk of the Senate

*Gregory M. Boy*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *12th* Day of *March* ....., 2008.

*[Signature]*  
.....  
Governor

