

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Introduced**

## **House Bill 3442**

By Delegates Mazzocchi, Kimble, Ridenour, Crouse,

Butler, T. Howell, Dillon, and Bridges

[Introduced March 17, 2025; 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 use of force, including deadly force, in defense of self, real, and personal property in a  
3 residence, or on curtilage whereupon the home or other place of residence is located;  
4 providing a complete defense from civil and/or criminal prosecution against persons  
5 lawfully using force in defensive actions; when there is no duty to retreat; and providing for  
6 the receipt of court costs, fees, and expenses for persons acting to protect self, real, and  
7 personal property, another person or in certain civil actions, providing what constitutes  
8 justified use of deadly force in defense of another.

*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; civil and  
criminal relief for persons resisting certain criminal activities and using permitted  
force and acting within the law for the use of that force; exceptions to relief;  
nonapplication of relief when person creates a hazardous or dangerous condition;  
providing civil remedies in civil actions relating to justified use of force; use of  
deadly force in defense of others.**

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 or  
3 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 a~~  
11 ~~legal right to be outside~~ within the curtilage of his or her home or other place of residence, may use  
12 ~~reasonable and proportionate~~ force, including deadly force, against an intruder or attacker to  
13 prevent forcible entry into the curtilage or home or other place of residence or to terminate the  
14 intruder's, or attacker's, unlawful entry upon the curtilage or home or other place of residence  
15 without a duty to retreat if the person reasonably apprehends that the intruder or attacker may kill  
16 or inflict serious bodily harm upon the person, or others, on the curtilage whereupon the home or  
17 residence is located, or if the person reasonably believes that the intruder or attacker intends to  
18 commit a felony upon the home or other place of residence, or upon the curtilage whereupon the  
19 home or other place of residence is located and the occupant reasonably believes deadly force is  
20 necessary: *Provided*, That the term curtilage does not include any common area shared between  
21 two or more homes or residences. *Provided*, That such person may use deadly force against an  
22 intruder or attacker in a place that is not his or her residence without a duty to retreat if the person  
23 reasonably believes that he or she or another is in imminent danger of death or serious bodily  
24 harm from which he or she or another can only be saved by the use of deadly force against the  
25 intruder or attacker.

26 (d) That a person may use deadly force against an intruder or attacker in a place that is not  
27 his or her residence if the person reasonably believes that he or she, or another, is in imminent  
28 danger of death or serious bodily harm from which he or she or another can only be saved by the  
29 use of deadly force against the intruder or attacker.

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

34 (e) (f) The full and complete civil and criminal defense created by the provisions of this

section is not available to a person who:

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

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

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

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

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

(i) A court of proper jurisdiction shall award reasonable attorney's fees, court costs, and all expenses incurred by a person in defense of any civil action or claim filed by an intruder or attacker when that civil action is dismissed, or a verdict is rendered in favor of the person defending the civil action, because of the complete defense provided in this section of the code.

(j) A court of proper jurisdiction shall award reasonable attorney's fees, court costs, and all expenses incurred by a person who files a civil action because that person was criminally prosecuted and a judge or jury rendered an acquittal, or dismissal with prejudice, or that person was granted a pardon in the underlying criminal action because of the complete defense provided in this section of the code.

(k) For purposes of subsection (d) of this section, protection of another by use of deadly force upon another person is justifiable when:

(A) A reasonable person would believe that such deadly force is necessary to protect a third person from imminent danger of death or serious bodily injury; and

- 61           (B) Under the circumstances as the defendant believes them to be, the person whom he  
62   seeks to protect would himself have been justified under the law in taking such action.

NOTE: The purpose of this bill is to provide a complete defense from civil and/or criminal prosecution against persons lawfully using force in 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.