



2021 South Dakota Legislature
House Bill 1212
ENROLLED

AN ACT

ENTITLED An Act to clarify the use of force.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added:

22-18-3.1. Definitions.

Terms used in §§ 22-18-4 to 22-18-4.9, inclusive, mean:

- (1) "Deadly force," force that is likely to cause death or great bodily harm;
- (2) "Dwelling," a building or structure of any kind, whether temporary or permanent, that is designed to be occupied by people lodging therein at night, together with any attached garage or porch, and which includes:
 - (a) A tent;
 - (b) A camper or motorhome; and
 - (c) Any other conveyance, whether mobile or immobile;
- (3) "Forcible felony," arson, assault, burglary, kidnapping, manslaughter, murder, rape, and robbery, and any other felony that involves the use of or the threat of physical force or violence against a person;
- (4) "Residence," a dwelling in which a person:
 - (a) Resides, either temporarily or permanently; or
 - (b) Is an invited guest; and
- (5) "Unlawful force," an act of force that is employed without the consent of the person against whom it is directed and without legal justification or excuse;
- (6) "Vehicle," a conveyance of any kind, whether motorized or not, which is designed to transport people or property.

Section 2. That § 22-18-4 be AMENDED.

22-18-4. Force--Defense of person.

A person is justified in using or threatening to use, force, other than deadly force, against another if the person reasonably believes that using or threatening to use force is necessary to defend against the other's imminent use of unlawful force.

A person who uses or threatens to use force in accordance with this section does not have a duty to retreat before using or threatening to use force.

Section 3. That a NEW SECTION be added:

22-18-4.1. Deadly force--Defense of person.

A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:

- (1) Not engaged in a criminal activity; and
- (2) In a place where the person has a right to be.

Section 4. That a NEW SECTION be added:

22-18-4.2. Defense of dwelling or residence--Force--Deadly force.

A person who is in a dwelling or residence, in which the person has a right to be:

- (1) Has no duty to retreat;
- (2) Has the right to stand his or her ground; and
- (3) Has the right to use or threaten to use:
 - (a) Force against another, if the person reasonably believes that using or threatening to use force is necessary to defend himself, herself, or another against the imminent use of unlawful force; and
 - (b) Deadly force, if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

Section 5. That a NEW SECTION be added:

22-18-4.3. Imminent death--Great bodily injury--Reasonable fear.

For purposes of § 22-18-4.2, a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm, to himself, herself, or another, when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm if:

- (1) The person against whom the defensive force was used or threatened:
 - (a) Was in the process of unlawfully entering a dwelling, residence, or occupied vehicle;
 - (b) Had unlawfully entered, a dwelling, residence, or occupied vehicle; or
 - (c) Had removed or was attempting to remove another against the other's will from a dwelling, residence, or occupied vehicle; and
- (2) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful entry or an unlawful and forcible act was occurring or had occurred.

Section 6. That a NEW SECTION be added:

22-18-4.4. Presumption of fear--Exceptions.

The presumption set forth in § 22-18-4.3 does not apply if:

- (1) The person against whom the defensive force is used or threatened:
 - (a) Has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, including as an owner, lessee, or titleholder; and
 - (b) Is not the subject of a protection order, including a temporary protection order;
- (2) The person sought to be removed is the child, grandchild, or otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used or threatened;
- (3) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or
- (4) The person against whom the defensive force is used or threatened is a law enforcement officer, who enters or attempts to enter a dwelling, residence, or vehicle in the performance of official duties and:
 - (a) The officer identified himself or herself as a law enforcement officer; or

- (b) The person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

Section 7. That a NEW SECTION be added:

22-18-4.5. Unlawful entry--Presumption.

A person who unlawfully enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

Section 8. That a NEW SECTION be added:

22-18-4.6. Force--Defense of property other than a dwelling.

A person is justified in using or threatening to use force, other than deadly force, against another if and to the extent the person reasonably believes that using or threatening to use force is necessary to prevent or terminate another's trespass on, or criminal interference with:

- (1) Real property other than a dwelling;
- (2) Personal property that is lawfully:
 - (a) In the person's possession;
 - (b) In the possession of a member of the person's immediate family or household; or
 - (c) In the possession of one whose property the person has a legal duty to protect.

A person who uses or threatens to use force in accordance with this section does not have a duty to retreat before using or threatening to use such force.

Section 9. That a NEW SECTION be added:

22-18-4.7. Deadly force--Defense of property other than a dwelling.

A person is justified in using or threatening to use deadly force only if the person reasonably believes that the use of deadly force is necessary to prevent the imminent commission of a forcible felony.

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person

using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where the person has a right to be.

Section 10. That a NEW SECTION be added:

22-18-4.8. Immunity.

A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution and from civil liability for the use or threatened use of such force brought by the person against whom force was used or threatened, or by any personal representative or heir of the person against whom force was used or threatened, unless:

- (1) (a) ___The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and
(b) The officer identified himself or herself; or
- (2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.

The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a defendant in the defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution in accordance with this section.

Section 11. That a NEW SECTION be added:

22-18-4.9. Aggressor--Use of force--Justification not available.

Any justification for the use or the threatened use of either force or deadly force is not available to a person who:

- (1) Is attempting to commit, committing, or escaping after the commission of a forcible felony; or
- (2) Initially provokes the use or threatened use of force against himself or herself, unless:
 - (a) Such force or threat of force is so great that the person reasonably believes he or she is in imminent danger of death or great bodily harm and that every reasonable means to escape such danger has been exhausted, other than the use or threatened use of force that is likely to cause death or great bodily harm to the assailant; or

- (b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.

Section 12. That § 20-9-8 be REPEALED.

20-9-8. Right to use force in defense of persons or property.

Section 13. That § 22-5-9 be REPEALED.

22-5-9. Resistance to public offenses permitted.

Section 14. That § 22-16-34 be REPEALED.

22-16-34. Justifiable homicide--Resisting attempted murder--Resisting felony on person or in dwelling house.

Section 15. That § 22-16-35 be REPEALED.

22-16-35. Justifiable homicide--Defense of person--Defense of other persons in household.

An Act to clarify the use of force.

I certify that the attached Act originated in
the:

House as Bill No. 1212

Received at this Executive Office
this ____ day of _____,
2021 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this ____ day of
_____, A.D., 2021

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2021
at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1212
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State