

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2144

By: Ellis

AS INTRODUCED

An Act relating to firearms; amending 21 O.S. 2001, Section 1289.25, which relates to physical or deadly force against intruder; defining terms; creating presumption that reasonable fear of death or great bodily harm exists under certain circumstances; providing exceptions; authorizing use of certain force under certain circumstances; creating presumption that a person acts with intent to use force or violence under specified circumstances; clarifying scope of criminal and civil immunity; providing exception when force is used against a peace officer; defining term; authorizing use of certain investigative procedures; prohibiting arrest for use of force unless probable cause determined; directing certain costs be awarded upon determination of immunity; updating statutory reference; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1289.25, is amended to read as follows:

Section 1289.25

PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

A. The Legislature hereby recognizes that the citizens of the State of Oklahoma have a right to expect absolute safety within their own homes.

B. ~~Any occupant of a dwelling is justified in using any degree of physical force, including but not limited to deadly force, against~~ As used in this section:

1. "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over

it, including a tent, and is designed to be occupied by people lodging therein at night;

2. "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest; and

3. "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

C. A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another person who has made an unlawful entry into that dwelling, and when the occupant has a reasonable belief that such other person might use any physical when using defensive force, no matter how slight, against any occupant of the dwelling that is intended or likely to cause death or great bodily harm to another if:

1. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, or occupied vehicle; and

2. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry was occurring or that an unlawful and forcible act had occurred.

~~C. Any occupant of a dwelling using physical~~

D. The presumption set forth in subsection C of this section does not apply if:

1. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle, such as an owner, lessee, or titleholder, and there is not a protective order from domestic violence in effect or a written, pretrial supervision order of no contact against that person;

2. The person or persons sought to be removed are children or grandchildren, or are otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;

3. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

4. The person against whom the defensive force is used is a peace officer, as defined in Section 648 of this title, who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a peace officer.

E. A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

F. A person who unlawfully and by force enters or attempts to enter the dwelling, residence, or occupied vehicle of another person is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

G. A person who uses force, ~~including but not limited to deadly force,~~ as permitted pursuant to the provisions of ~~subsection B~~ subsections C and E of this section, ~~shall have an affirmative defense in any~~ is justified in using such force and is immune from criminal prosecution ~~for an offense arising from the reasonable and~~ civil action for the use of such force ~~and shall be immune from any civil liability for injuries or death resulting from the reasonable~~

use of such force, unless the person against whom force was used is a peace officer, as defined in Section 648 of this title, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a peace officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

D. H. A law enforcement agency may use standard procedures for investigating the use of force, but the law enforcement agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

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

J. The provisions of this section and the provisions of the Oklahoma Self-Defense Act, Sections ~~4~~ 1290.1 through ~~25~~ 1290.26 of this ~~act~~ title, shall not be construed to require any person using a pistol pursuant to the provisions of this section to be licensed in any manner.

SECTION 2. This act shall become effective November 1, 2006.

50-2-7895            GRS            12/14/05