STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL 2702 By: Vaughan

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2011, Section 1289.25, which relates to the use of deadly force; clarifying manner in which defensive force may be used; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, 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 or places of business.

B. A person or an owner, manager or employee of a business is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force 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, or by deception and with violent intent had entered a dwelling, residence, occupied vehicle, or a place of business, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, occupied vehicle, or place of business; and

2. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry ~~or~~, unlawful and forcible act, or an entry by deception and with violent intent was occurring or had occurred.

C. The presumption set forth in subsection B 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 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; or

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

D. 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.

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

F. A person who uses force, as permitted pursuant to the provisions of subsections B and D of this section, is justified in using such force and is immune from criminal prosecution and civil action for the use of such force. As used in this subsection, the term "criminal prosecution" includes charging or prosecuting the defendant.

G. 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.

H. 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 F of this section.

I. The provisions of this section and the provisions of the Oklahoma Self-Defense Act shall not be construed to require any person using a pistol pursuant to the provisions of this section to be licensed in any manner.

J. 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;

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.

SECTION 2. This act shall become effective November 1, 2012.

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