

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3165

By: West (Kevin)

AS INTRODUCED

An Act relating to firearms; amending 21 O.S. 2011, Section 1289.25, as last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp. 2019, Section 1289.25), which relates to the Oklahoma Firearms Act of 1971; providing burden of proof standard when immunity claim raised in criminal prosecutions; 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, as last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp. 2019, 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, places of business or places of worship and have the right to establish policies regarding the possession of weapons on property pursuant to the provisions of Section 1290.22 of this title.

1 B. A person, regardless of official capacity or lack of  
2 official capacity, within a place of worship or a person, an owner,  
3 manager or employee of a business is presumed to have held a  
4 reasonable fear of imminent peril of death or great bodily harm to  
5 himself or herself or another when using defensive force that is  
6 intended or likely to cause death or great bodily harm to another  
7 if:

8 1. a. The person against whom the defensive force was used  
9 was in the process of unlawfully and forcefully  
10 entering, or had unlawfully and forcibly entered, a  
11 dwelling, residence, occupied vehicle, place of  
12 business or place of worship, or if that person had  
13 removed or was attempting to remove another against  
14 the will of that person from the dwelling, residence,  
15 occupied vehicle, place of business or place of  
16 worship~~-,~~ or

17 b. The person who uses defensive force knew or had reason  
18 to believe that an unlawful and forcible entry or  
19 unlawful and forcible act was occurring or had  
20 occurred; or

21 2. The person who uses defensive force knew or had a reasonable  
22 belief that the person against whom the defensive force was used  
23 entered or was attempting to enter into a dwelling, residence,  
24 occupied vehicle, place of business or place of worship for the

1 purpose of committing a forcible felony, as defined in Section 733  
2 of this title, and that the defensive force was necessary to prevent  
3 the commission of the forcible felony.

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

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

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

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

19 D. A person who is not engaged in an unlawful activity and who  
20 is attacked in any other place where he or she has a right to be has  
21 no duty to retreat and has the right to stand his or her ground and  
22 meet force with force, including deadly force, if he or she  
23 reasonably believes it is necessary to do so to prevent death or  
24

1 great bodily harm to himself or herself or another or to prevent the  
2 commission of a forcible felony.

3 E. A person who unlawfully and by force enters or attempts to  
4 enter the dwelling, residence, occupied vehicle of another person,  
5 place of business or place of worship is presumed to be doing so  
6 with the intent to commit an unlawful act involving force or  
7 violence.

8 F. A person who uses defensive force, as permitted pursuant to  
9 the provisions of subsections A, B, D and E of this section, is  
10 justified in using such defensive force and is immune from criminal  
11 prosecution and civil action for the use of such defensive force.  
12 As used in this subsection, the term "criminal prosecution" includes  
13 charging or prosecuting the defendant. If a prima facie claim of  
14 immunity from criminal prosecution has been raised by a person  
15 pursuant to this section, the State of Oklahoma shall be required to  
16 prove beyond a reasonable doubt that such immunity is not  
17 applicable.

18 G. A law enforcement agency may use standard procedures for  
19 investigating the use of defensive force, but the law enforcement  
20 agency may not arrest the person for using defensive force unless it  
21 determines that there is probable cause that the defensive force  
22 that was used was unlawful.

23 H. The court shall award reasonable attorney fees, court costs,  
24 compensation for loss of income, and all expenses incurred by the

1 defendant in defense of any civil action brought by a plaintiff if  
2 the court finds that the defendant is immune from prosecution as  
3 provided in subsection F of this section.

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

8 J. A person pointing a weapon at a perpetrator in self-defense  
9 or in order to thwart, stop or deter a forcible felony or attempted  
10 forcible felony shall not be deemed guilty of committing a criminal  
11 act.

12 K. As used in this section:

13 1. "Defensive force" includes, but shall not be limited to,  
14 pointing a weapon at a perpetrator in self-defense or in order to  
15 thwart, stop or deter a forcible felony or attempted forcible  
16 felony;

17 2. "Dwelling" means a building or conveyance of any kind,  
18 including any attached porch, whether the building or conveyance is  
19 temporary or permanent, mobile or immobile, which has a roof over  
20 it, including a tent, and is designed to be occupied by people;

21 3. "Place of worship" means:

22 a. any permanent building, structure, facility or office  
23 space owned, leased, rented or borrowed, on a full-  
24 time basis, when used for worship services, activities

1 and business of the congregation, which may include,  
2 but is not ~~be~~ limited to, churches, temples,  
3 synagogues and mosques, and

4 b. any permanent building, structure, facility or office  
5 space owned, leased, rented or borrowed for use on a  
6 temporary basis, when used for worship services,  
7 activities and business of the congregation ~~including~~  
8 which may include, but is not limited to, churches,  
9 temples, synagogues and mosques;

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

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

15 SECTION 2. This act shall become effective November 1, 2020.

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17 57-2-9575 GRS 12/11/19  
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