

House File 92 - Introduced

HOUSE FILE 92

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A BILL FOR

1 An Act relating to the justifiable use of reasonable force and
2 providing a remedy.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 704.1, Code 2015, is amended to read as
2 follows:

3 **704.1 Reasonable force.**

4 1. "Reasonable force" is means that force and no more which
5 a reasonable person, in like circumstances, would judge to
6 be necessary to prevent an injury or loss and can include
7 deadly force if it is reasonable to believe that such force is
8 necessary to avoid injury or risk to one's life or safety or
9 the life or safety of another, or it is reasonable to believe
10 that such force is necessary to resist a like force or threat.

11 2. Reasonable force, including deadly force, may be used
12 even if an alternative course of action is available if the
13 alternative entails a risk to life or safety, or the life or
14 safety of a third party, or requires one to abandon or retreat
15 from one's dwelling or place of business or employment.

16 3. A person may be wrong in the estimation of the danger or
17 the force necessary to repel the danger as long as there is a
18 reasonable basis for the belief of the person and the person
19 acts reasonably in the response to that belief.

20 4. A person who is not engaged in illegal activity has no
21 duty to retreat from any place where the person is lawfully
22 present before using force as specified in this chapter.
23 A finder of fact shall not be permitted to consider the
24 possibility of retreat as a factor in determining whether or
25 not a person who used force reasonably believed that the force
26 was necessary to prevent injury, loss, or risk to life or
27 safety.

28 Sec. 2. Section 704.2, Code 2015, is amended by adding the
29 following new subsection:

30 NEW SUBSECTION. 1A. A threat to cause serious injury
31 or death, by the production, display, or brandishing of a
32 deadly weapon, is not deadly force, as long as the actions of
33 the person are limited to creating an expectation that the
34 person may use deadly force to defend oneself, another, or as
35 otherwise authorized by law.

1 Sec. 3. NEW SECTION. **704.2A Justifiable use of deadly**
2 **force.**

3 1. For purposes of this chapter, a person is presumed to
4 reasonably believe that deadly force is necessary to avoid
5 injury or risk to one's life or safety or the life or safety of
6 another in either of the following circumstances:

7 *a.* The person against whom force is used, at the time the
8 force is used, is doing any of the following:

9 (1) Unlawfully entering by force or stealth, or has
10 unlawfully entered by force or stealth and remains within the
11 dwelling, place of business or employment, or occupied vehicle
12 of the person using force.

13 (2) Unlawfully removing or is attempting to unlawfully
14 remove another person against the other person's will from the
15 dwelling, place of business or employment, or occupied vehicle
16 of the person using force.

17 *b.* The person using force knows or has reason to believe
18 that any of the conditions set forth in paragraph "a" are
19 occurring or have occurred.

20 2. The presumption set forth in subsection 1 does not
21 apply if, at the time force is used, any of the following
22 circumstances are present:

23 *a.* The person using defensive force is engaged in a
24 criminal offense, is attempting to escape from the scene of a
25 criminal offense that the person has committed, or is using the
26 dwelling, place of business or employment, or occupied vehicle
27 to further a criminal offense.

28 *b.* The person sought to be removed is a child or grandchild
29 or is otherwise in the lawful custody or under the lawful
30 guardianship of the person against whom force is used.

31 *c.* The person against whom force is used is a peace officer
32 who has entered or is attempting to enter a dwelling, place
33 of business or employment, or occupied vehicle in the lawful
34 performance of the peace officer's official duties, and the
35 person using force knows or reasonably should know that the

1 person who has entered or is attempting to enter is a peace
2 officer.

3 *d.* The person against whom the force is used has the right
4 to be in, or is a lawful resident of, the dwelling, place of
5 business or employment, or occupied vehicle of the person using
6 force, and a protective or no-contact order is not in effect
7 against the person against whom the force is used.

8 Sec. 4. Section 704.3, Code 2015, is amended to read as
9 follows:

10 **704.3 Defense of self or another.**

11 A person is justified in the use of reasonable force when
12 the person reasonably believes that such force is necessary to
13 defend oneself or another from any actual or imminent use of
14 unlawful force.

15 Sec. 5. NEW SECTION. **704.4A Immunity for justifiable use of**
16 **force.**

17 1. As used in this section, "*criminal prosecution*" means
18 arrest, detention, charging, or prosecution.

19 2. A person who uses reasonable force pursuant to this
20 chapter shall be immune from any criminal prosecution or civil
21 action for using such force.

22 3. A law enforcement agency may use standard investigating
23 procedures for investigating the use of force, but the law
24 enforcement agency shall not arrest a person for using force
25 unless the law enforcement agency determines there is probable
26 cause that the force was unlawful under this chapter.

27 4. The court shall award reasonable attorney fees, court
28 costs, compensation for loss of income, and all expenses
29 incurred by the defendant in defense of any civil action
30 brought by the plaintiff if the court finds that the defendant
31 is immune from prosecution as provided in subsection 2.

32 Sec. 6. Section 704.7, Code 2015, is amended to read as
33 follows:

34 **704.7 Resisting ~~forcible~~ violent felony.**

35 1. As used in this section, "*violent felony*" means any

1 felonious sexual abuse involving compulsion or the use of a
2 weapon or any felonious assault, murder, kidnapping, robbery,
3 arson, or burglary.

4 2. A person who ~~knows~~ reasonably believes that a ~~forceible~~
5 violent felony is being or will imminently be perpetrated is
6 justified in using, ~~against the perpetrator,~~ reasonable force,
7 including deadly force, against the perpetrator or perpetrators
8 to prevent the completion of or terminate the perpetration of
9 that felony.

10 Sec. 7. REPEAL. Section 707.6, Code 2015, is repealed.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 Current law provides that a person may use reasonable force,
15 including deadly force, even if an alternative course of action
16 is available if the alternative entails a risk of life or
17 safety, or the life or safety of a third party, or requires one
18 to abandon or retreat from one's residence or place of business
19 or employment.

20 This bill provides that a person may use reasonable force,
21 including deadly force, if it is reasonable to believe such
22 force is necessary to avoid injury or risk to one's life or
23 safety or the life or safety of another, even if an alternative
24 course of action is available if the alternative entails a risk
25 to life or safety, or the life or safety of a third party.

26 The bill provides that a person may be wrong in the
27 estimation of the danger or the force necessary to repel the
28 danger as long as there is a reasonable basis for the belief
29 and the person acts reasonably in the response to that belief.

30 The bill further provides that a person who is not engaged in
31 an illegal activity has no duty to retreat from any place where
32 the person is lawfully present before using force. The bill
33 prohibits a finder of fact from considering the possibility of
34 retreat as a factor in determining whether or not a person who
35 used force reasonably believed that the force was necessary to

1 prevent injury, loss, or risk to life or safety.

2 The bill provides that a threat to cause serious injury
3 or death by the production, display, or brandishing of a
4 deadly weapon, is not deadly force, as long as the actions of
5 the person are limited to creating an expectation that the
6 person may use deadly force to defend oneself, another, or as
7 otherwise authorized by law.

8 The bill creates presumptions for the justifiable use of
9 deadly force in certain circumstances.

10 Under the bill, a person is presumed to be justified in
11 using deadly force if the person reasonably believes that
12 deadly force is necessary to avoid injury or risk to one's
13 life or safety or the life or safety of another under the
14 following circumstances: the person against whom force is used
15 is unlawfully entering by force or stealth, or has unlawfully
16 entered by force or stealth and remains within a dwelling,
17 place of business or employment, or occupied vehicle of the
18 person using force; or the person against whom force is used
19 is unlawfully removing or attempting to remove another person
20 against the other person's will from a dwelling, place of
21 business or employment, or occupied vehicle of the person using
22 force. In addition, the person using force must know or have
23 reason to believe that the aforementioned circumstances are
24 occurring or have occurred.

25 The presumption of the use of justifiable deadly force
26 under the bill does not apply at the time force is used in the
27 following circumstances: the person using defensive force is
28 engaged in a criminal offense or activity; the person sought
29 to be removed is a child or grandchild or is otherwise in the
30 lawful custody of the person against whom force is used; the
31 person against whom force is used is a peace officer who has
32 entered or is attempting to enter a dwelling, place of business
33 or employment, or occupied vehicle in the lawful performance
34 of the peace officer's official duties, and the person using
35 force knows or reasonably should know that the person who has

1 entered or is attempting to enter is a peace officer; or the
2 person against whom force is used has the right to be in, or
3 is a lawful resident of, the dwelling, place of business or
4 employment, or occupied vehicle of the person using force, and
5 a protective or no-contact order is not in effect against the
6 person against whom the force is used.

7 The bill provides that a person is justified in the use of
8 reasonable force when the person reasonably believes that such
9 force is necessary to defend oneself or another from any actual
10 as well as imminent use of unlawful force.

11 The bill repeals Code section 707.6 and consolidates
12 criminal and civil immunity provisions in new Code section
13 704.4A. Under the bill, a person who uses reasonable force
14 shall be immune from any criminal prosecution or civil action
15 for using such force.

16 Under the bill, a law enforcement agency shall not arrest a
17 person for using force unless it determines there is probable
18 cause that the force was unlawful under Code chapter 704.

19 The bill also provides that if a defendant is sued by a
20 plaintiff for using reasonable force, the court shall award the
21 defendant reasonable attorney fees, court costs, compensation
22 for loss of income, and expenses if the court finds the
23 defendant is immune from prosecution.

24 The bill also provides that a person who reasonably
25 believes that a violent felony is being or will imminently be
26 perpetrated is justified in using reasonable force, including
27 deadly force, against a perpetrator to prevent or terminate the
28 perpetration of that felony. The bill defines "violent felony"
29 to mean any felonious assault, murder, violent or forced sexual
30 abuse, kidnapping, robbery, arson, or burglary.