

HOUSE BILL No. 1284

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-31; IC 35-41-3-2.

Synopsis: Self-defense and the defense of others. Provides immunity for a justified use of force in certain instances. Requires a trial court to conduct a pretrial hearing concerning the application of the immunity when the defendant raises the justified use of force immunity as a defense. Requires a claimant or plaintiff to prove, by clear and convincing evidence, that a claim or action is not prohibited by the justified use of force immunity. Requires a court to dismiss a prohibited claim or action. Requires a court to award, in certain instances, reasonable attorney's fees and costs to a defendant when the justified use of force immunity is successfully raised. Makes conforming amendments.

Effective: July 1, 2019.

Lucas

January 10, 2019, read first time and referred to Committee on Judiciary.



First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1284

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-30-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]:

4 **Chapter 31. Immunity for Justified Use of Force**

5 **Sec. 1. (a) The justified use of force described under**
6 **IC 35-41-3-2 provides a complete immunity against any claim or**
7 **action initiated by a person who alleges to have been injured or**
8 **damaged by any such use of force.**

9 **(b) In no case shall any use of force justified under IC 35-41-3-2**
10 **give rise to any claim or action for damages or compensation**
11 **against a person, employer, or estate of a person using such force**
12 **by or on behalf of any person who:**

- 13 **(1) was attempting to commit, committing, or escaping after**
- 14 **the commission of a felony at the time such force was used; or**
- 15 **(2) was attempting to cause, causing, or escaping after causing**
- 16 **unlawful serious bodily injury to any other person at the time**
- 17 **such force was used.**



1 **This prohibition applies to any claim or action brought by the**
 2 **estate, personal representative, spouse, or family member of a**
 3 **person described in subdivision (1) or (2).**

4 **(c) If a person raises the immunity set forth in subsection (a) as**
 5 **an affirmative defense, the trial court shall conduct an evidentiary**
 6 **hearing prior to trial to determine whether an action is prohibited**
 7 **by subsection (b). The burden of proof shall be upon the claimant**
 8 **to prove, by clear and convincing evidence, that the action is not**
 9 **prohibited by subsection (b). In any action commenced prior to**
 10 **July 1, 2019, the trial court shall freely grant a defendant leave to**
 11 **amend the defendant's answer to include the immunity defined by**
 12 **subsection (a) as an affirmative defense prior to trial.**

13 **(d) If the court finds that a party has commenced a prohibited**
 14 **action and the action was commenced before, on, or after July 1,**
 15 **2019, the finding constitutes conclusive evidence that the action is**
 16 **groundless, and the court shall dismiss the action with prejudice.**
 17 **If the court finds that the dismissed action was commenced or**
 18 **maintained after June 30, 2019, the court shall award to the**
 19 **defendant any reasonable attorney's fees and costs incurred in**
 20 **defending the action after June 30, 2019.**

21 SECTION 2. IC 35-41-3-2, AS AMENDED BY P.L.13-2013,
 22 SECTION 139, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) In enacting this section, the
 24 general assembly finds and declares that it is the policy of this state to
 25 recognize the unique character of a citizen's home and to ensure that a
 26 citizen feels secure in his or her own home against unlawful intrusion
 27 by another individual or a public servant. By reaffirming the long
 28 standing right of a citizen to protect his or her home against unlawful
 29 intrusion, however, the general assembly does not intend to diminish
 30 in any way the other robust self defense rights that citizens of this state
 31 have always enjoyed. Accordingly, the general assembly also finds and
 32 declares that it is the policy of this state that people have a right to
 33 defend themselves and third parties from physical harm and crime **and**
 34 **that no person in this state shall be placed in legal jeopardy of any**
 35 **kind whatsoever for protecting the person or a third person by**
 36 **reasonable means necessary.** The purpose of this section is to provide
 37 the citizens of this state with a lawful means of carrying out this policy.
 38 **Provisions concerning civil immunity for the justified use of force**
 39 **as defined in this section are codified under IC 34-30-31.**

40 (b) As used in this section, "public servant" means a person
 41 described in IC 35-31.5-2-129 or IC 35-31.5-2-185.

42 (c) A person is justified in using reasonable force against any other



1 person to protect the person or a third person from what the person
 2 reasonably believes to be the imminent use of unlawful force.
 3 However, a person:

4 (1) is justified in using deadly force; and

5 (2) does not have a duty to retreat;

6 if the person reasonably believes that that force is necessary to prevent
 7 serious bodily injury to the person or a third person or the commission
 8 of a forcible felony. ~~No person in this state shall be placed in legal~~
 9 ~~jeopardy of any kind whatsoever for protecting the person or a third~~
 10 ~~person by reasonable means necessary.~~

11 (d) A person:

12 (1) is justified in using reasonable force, including deadly force,
 13 against any other person; and

14 (2) does not have a duty to retreat;

15 if the person reasonably believes that the force is necessary to prevent
 16 or terminate the other person's unlawful entry of or attack on the
 17 person's dwelling, curtilage, or occupied motor vehicle.

18 (e) With respect to property other than a dwelling, curtilage, or an
 19 occupied motor vehicle, a person is justified in using reasonable force
 20 against any other person if the person reasonably believes that the force
 21 is necessary to immediately prevent or terminate the other person's
 22 trespass on or criminal interference with property lawfully in the
 23 person's possession, lawfully in possession of a member of the person's
 24 immediate family, or belonging to a person whose property the person
 25 has authority to protect. However, a person:

26 (1) is justified in using deadly force; and

27 (2) does not have a duty to retreat;

28 only if that force is justified under subsection (c).

29 (f) A person is justified in using reasonable force, including deadly
 30 force, against any other person and does not have a duty to retreat if the
 31 person reasonably believes that the force is necessary to prevent or stop
 32 the other person from hijacking, attempting to hijack, or otherwise
 33 seizing or attempting to seize unlawful control of an aircraft in flight.
 34 For purposes of this subsection, an aircraft is considered to be in flight
 35 while the aircraft is:

36 (1) on the ground in Indiana:

37 (A) after the doors of the aircraft are closed for takeoff; and

38 (B) until the aircraft takes off;

39 (2) in the airspace above Indiana; or

40 (3) on the ground in Indiana:

41 (A) after the aircraft lands; and

42 (B) before the doors of the aircraft are opened after landing.



1 (g) Notwithstanding subsections (c) through (e), a person is not
2 justified in using force if:

3 (1) the person is committing or is escaping after the commission
4 of a crime;

5 (2) the person provokes unlawful action by another person with
6 intent to cause bodily injury to the other person; or

7 (3) the person has entered into combat with another person or is
8 the initial aggressor unless the person withdraws from the
9 encounter and communicates to the other person the intent to do
10 so and the other person nevertheless continues or threatens to
11 continue unlawful action.

12 (h) Notwithstanding subsection (f), a person is not justified in using
13 force if the person:

14 (1) is committing, or is escaping after the commission of, a crime;

15 (2) provokes unlawful action by another person, with intent to
16 cause bodily injury to the other person; or

17 (3) continues to combat another person after the other person
18 withdraws from the encounter and communicates the other
19 person's intent to stop hijacking, attempting to hijack, or
20 otherwise seizing or attempting to seize unlawful control of an
21 aircraft in flight.

22 (i) A person is justified in using reasonable force against a public
23 servant if the person reasonably believes the force is necessary to:

24 (1) protect the person or a third person from what the person
25 reasonably believes to be the imminent use of unlawful force;

26 (2) prevent or terminate the public servant's unlawful entry of or
27 attack on the person's dwelling, curtilage, or occupied motor
28 vehicle; or

29 (3) prevent or terminate the public servant's unlawful trespass on
30 or criminal interference with property lawfully in the person's
31 possession, lawfully in possession of a member of the person's
32 immediate family, or belonging to a person whose property the
33 person has authority to protect.

34 (j) Notwithstanding subsection (i), a person is not justified in using
35 force against a public servant if:

36 (1) the person is committing or is escaping after the commission
37 of a crime;

38 (2) the person provokes action by the public servant with intent to
39 cause bodily injury to the public servant;

40 (3) the person has entered into combat with the public servant or
41 is the initial aggressor, unless the person withdraws from the
42 encounter and communicates to the public servant the intent to do



- 1 so and the public servant nevertheless continues or threatens to
2 continue unlawful action; or
3 (4) the person reasonably believes the public servant is:
4 (A) acting lawfully; or
5 (B) engaged in the lawful execution of the public servant's
6 official duties.
- 7 (k) A person is not justified in using deadly force against a public
8 servant whom the person knows or reasonably should know is a public
9 servant unless:
10 (1) the person reasonably believes that the public servant is:
11 (A) acting unlawfully; or
12 (B) not engaged in the execution of the public servant's official
13 duties; and
14 (2) the force is reasonably necessary to prevent serious bodily
15 injury to the person or a third person.

