



2022 South Dakota Legislature

Senate Bill 195

Introduced by: **Senator Wiik**

1 **An Act to establish the burden of proof after a claim of immunity.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 22-18-4.8 be AMENDED:**

4 **22-18-4.8.** A person who uses or threatens to use force, as permitted in §§ 22-
5 18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal
6 prosecution and from civil liability for the use or threatened use of such force brought by
7 the person against whom force was used or threatened, or by any personal representative
8 or heir of the person against whom force was used or threatened, unless:

9 (1) (a) The person against whom force was used or threatened is a law
10 enforcement officer, who was acting in the performance of official duties; and

11 (b) The officer identified himself or herself; or

12 (2) The person using or threatening to use force knew or reasonably should have
13 known that the person was a law enforcement officer who was acting in the
14 performance of official duties.

15 The court shall award reasonable attorney's fees, court costs, compensation for
16 loss of income, and all expenses incurred by a defendant in the defense of any civil action
17 brought by a plaintiff, if the court finds that the defendant is immune from prosecution in
18 accordance with this section.

19 In a criminal prosecution, once a prima facie claim of self-defense immunity has
20 been raised by the defendant, the burden of proof, by clear and convincing evidence, is
21 on the party seeking to overcome the immunity from criminal prosecution provided for in
22 this section.

23 As used in this section, the term, criminal prosecution, includes arresting, detaining
24 in custody, and charging or prosecuting the defendant.

1 An order of a court granting or denying a motion to dismiss, in accordance with
2 this section, may be appealed to the Supreme Court. The appeal must be taken within ten
3 days from the written notice of entry of the judgment or order.