

1 **SENATE FLOOR VERSION**

2 February 16, 2017

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 40

6 By: Bergstrom and David

7  
8 An Act relating to firearms; amending 21 O.S. 2011,  
9 Section 1289.16, as amended by Section 20, Chapter  
10 259, O.S.L. 2012 (21 O.S. Supp. 2016, Section  
11 1289.16), which relates to felony pointing firearms;  
12 providing an exception; modifying inclusions;  
13 amending 21 O.S. 2011, Section 1289.25, which relates  
14 to physical or deadly force against an intruder;  
15 making certain preclusions; providing definition; and  
16 providing an effective date.

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

18 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.16, as  
19 amended by Section 20, Chapter 259, O.S.L. 2012 (21 O.S. Supp. 2016,  
20 Section 1289.16), is amended to read as follows:

21 Section 1289.16.

22 **FELONY POINTING FIREARMS**

23 ~~It~~ Except for an act of self-defense, it shall be unlawful for  
24 any person to willfully or without lawful cause point a shotgun,  
rifle or pistol, or any deadly weapon, whether loaded or not, at any  
person or persons for the purpose of threatening or with the

1 intention of discharging the firearm or with any malice or for any  
2 purpose of injuring, either through physical injury or mental or  
3 emotional intimidation or for purposes of whimsy, humor or prank, or  
4 in anger or otherwise, but not to include the pointing of shotguns,  
5 rifles or pistols by law enforcement authorities in the performance  
6 of their duties, armed security guards or armed private  
7 investigators licensed by the Council on Law Enforcement Education  
8 and Training pursuant to the Oklahoma Security Guard and Private  
9 Investigator Act in the performance of their duties, members of the  
10 state military forces in the performance of their duties, members of  
11 the federal military reserve and active military components in the  
12 performance of their duties, or any federal government law  
13 enforcement officer in the performance of any duty, or in the  
14 performance of a play on stage, rodeo, television or on film, or in  
15 defense of any person, one's home or property. Any person convicted  
16 of a violation of the provisions of this section shall be punished  
17 as provided in Section 1289.17 of this title.

18 Any person convicted of a violation of the provisions of this  
19 section after having been issued a handgun license pursuant to the  
20 Oklahoma Self-Defense Act shall have the license revoked and shall  
21 be subject to an administrative fine of One Thousand Dollars  
22 (\$1,000.00), upon a hearing and determination by the Oklahoma State  
23 Bureau of Investigation that the person is in violation of the  
24 provisions of this section.

1 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1289.25, is  
2 amended to read as follows:

3 Section 1289.25.

4 PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

5 A. The Legislature hereby recognizes that the citizens of the  
6 State of Oklahoma have a right to expect absolute safety within  
7 their own homes or places of business.

8 B. A person or an owner, manager or employee of a business is  
9 presumed to have held a reasonable fear of imminent peril of death  
10 or great bodily harm to himself or herself or another when using  
11 defensive force that is intended or likely to cause death or great  
12 bodily harm to another if:

13 1. The person against whom the defensive force was used was in  
14 the process of unlawfully and forcefully entering, or had unlawfully  
15 and forcibly entered, a dwelling, residence, occupied vehicle, or a  
16 place of business, or if that person had removed or was attempting  
17 to remove another against the will of that person from the dwelling,  
18 residence, occupied vehicle, or place of business; and

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

22 C. The presumption set forth in subsection B of this section  
23 does not apply if:  
24

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

6           2. The person or persons sought to be removed are children or  
7 grandchildren, or are otherwise in the lawful custody or under the  
8 lawful guardianship of, the person against whom the defensive force  
9 is used; or

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

13          D. A person who is not engaged in an unlawful activity and who  
14 is attacked in any other place where he or she has a right to be has  
15 no duty to retreat and has the right to stand his or her ground and  
16 meet force with force, including deadly force, if he or she  
17 reasonably believes it is necessary to do so to prevent death or  
18 great bodily harm to himself or herself or another or to prevent the  
19 commission of a forcible felony.

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

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

7 G. A law enforcement agency may use standard procedures for  
8 investigating the use of defensive force, but the law enforcement  
9 agency may not arrest the person for using defensive force unless it  
10 determines that there is probable cause that the defensive force  
11 that was used was unlawful.

12 H. The court shall award reasonable attorney fees, court costs,  
13 compensation for loss of income, and all expenses incurred by the  
14 defendant in defense of any civil action brought by a plaintiff if  
15 the court finds that the defendant is immune from prosecution as  
16 provided in subsection F of this section.

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

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

1        K. As used in this section:

2        1. "Defensive force" includes, but shall not be limited to,  
3 pointing a weapon at a perpetrator in self-defense or in order to  
4 thwart, stop or deter a forcible felony or attempted forcible  
5 felony;

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

10        ~~2.~~ 3. "Residence" means a dwelling in which a person resides  
11 either temporarily or permanently or is visiting as an invited  
12 guest; and

13        ~~3.~~ 4. "Vehicle" means a conveyance of any kind, whether or not  
14 motorized, which is designed to transport people or property.

15        SECTION 3. This act shall become effective November 1, 2017.

16        COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY  
17        February 16, 2017 - DO PASS AS AMENDED