



2022 South Dakota Legislature
Senate Bill 195
ENROLLED

AN ACT

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

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

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

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

- (1) (a) The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and
(b) The officer identified himself or herself; or
- (2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.

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

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

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

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

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 195

2022 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2022

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2022
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 195
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State