

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

970M0301

HOUSE ENGROSSED NO. **HB 1134** - 02/01/2006

Introduced by: Representatives Hanks, Brunner, Buckingham, Davis, Frost, Fryslie, Garnos, Hackl, Klautt, Krebs, McCoy, Rave, and Rhoden and Senators Lintz, Bogue, and Duenwald

1 FOR AN ACT ENTITLED, An Act to to revise certain provisions regarding the justifiable use
2 of force.

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

4 Section 1. That § 22-5-9 be amended to read as follows:

5 22-5-9. Any person may lawfully resist, by force or violence, the commission of any public
6 offense as follows:

7 (1) Any person, ~~about to be injured~~ upon threat of bodily injury, may make sufficient
8 resistance to prevent an offense against his or her person or the person of any family
9 or household member ~~thereof~~, or to prevent an illegal attempt by force to take or
10 injure property in his or her lawful possession; and

11 (2) Any person may make sufficient resistance in aid or defense of a any other person,
12 ~~about to be injured~~ threatened with bodily injury, to prevent such offense.

13 Section 2. That § 22-18-4 be amended to read as follows:

14 22-18-4. ~~To use or attempt to use or offer to use force or violence upon or toward the person~~
15 ~~of another is not unlawful if committed either by any person about to be injured, or by any other~~



1 ~~person in the aid or defense of a person about to be injured, in preventing or attempting to~~
2 ~~prevent an offense against his or her own person, or in preventing any trespass or other unlawful~~
3 ~~interference with real or personal property in his or her lawful possession. However, the force~~
4 ~~or violence used cannot be more than that sufficient to prevent such offense. Any person is~~
5 justified in the use of force or violence against another person when, and to the extent that, the
6 person reasonably believes that such conduct is necessary to prevent or terminate the other
7 person's trespass on, or other criminal interference with real property or personal property,
8 lawfully in his or her possession or in the possession of another who is a member of his or her
9 immediate family or household or of a person whose property he or she has a legal duty to
10 protect. However, the person is justified in the use of deadly force only as provided in §§ 22-16-
11 34 and 22-16-35. A person does not have a duty to retreat if the person is in a place where he
12 or she has a right to be. The force or violence used pursuant to this section cannot be more than
13 that sufficient to prevent such offense.