

IN THE SENATE

SENATE BILL NO. 1004

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO SELF-DEFENSE; AMENDING CHAPTER 2, TITLE 19, IDAHO CODE, BY THE  
2 ADDITION OF A NEW SECTION 19-202B, IDAHO CODE, TO PROVIDE FOR IMMUNITY  
3 FROM CRIMINAL PROSECUTION WHEN FORCE IS USED IN CERTAIN INSTANCES, TO  
4 DEFINE TERMS, TO PROVIDE FOR REIMBURSEMENT FOR A DEFENDANT IN CERTAIN  
5 INSTANCES, TO PROVIDE THAT OTHER DEFENSES TO CIVIL AND CRIMINAL LIABIL-  
6 ITY SHALL NOT BE IMPAIRED, TO PROVIDE FOR A SPECIAL VERDICT IN CERTAIN  
7 INSTANCES, TO PROVIDE FOR A PRETRIAL IMMUNITY HEARING, AND TO PROVIDE  
8 FOR A BURDEN OF PROOF; PROVIDING SEVERABILITY; AND DECLARING AN EMER-  
9 GENCY.  
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11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Chapter 2, Title 19, Idaho Code, be, and the same is  
13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
14 ignated as Section 19-202B, Idaho Code, and to read as follows:

15 19-202B. IMMUNITY AND REIMBURSEMENT FOR JUSTIFIABLE HOMICIDE, DE-  
16 FENSE OF SELF, OTHERS, AND CERTAIN PLACES. (1) A person who uses or threatens  
17 to use force as justified in section 18-4009, Idaho Code, or as otherwise  
18 permitted in sections 19-201 through 19-205, Idaho Code, is immune from any  
19 criminal prosecution for the use of such force or threat of force except when  
20 the person knew or reasonably should have known that the person against whom  
21 the force or threat of force was used was a law enforcement officer acting  
22 in the capacity of his official duties. A law enforcement officer may use  
23 standard procedures for investigating the use or threat of force, but the  
24 officer may not arrest the person using or threatening force unless the offi-  
25 cer determines that there is probable cause that the force that was used or  
26 threatened was unlawful.

27 (2) As used in this section:

28 (a) "Criminal prosecution" includes arresting, detaining in custody,  
29 and charging or prosecuting the defendant.

30 (b) "Law enforcement officer" means any court personnel, sheriff,  
31 constable, peace officer, state police officer, correctional officer,  
32 probation or parole official, prosecuting attorney, city attorney, or  
33 attorney general, or their employees or agents, or any other person  
34 charged with the duty of enforcement of the criminal traffic or penal  
35 laws of this state or any other law enforcement personnel or peace offi-  
36 cer as described in chapter 51, title 19, Idaho Code.

37 (3) When a person charged with a crime is found not guilty by reason of  
38 self-defense, the county where the person was charged with the crime shall  
39 reimburse the defendant for all reasonable costs, including loss of time,  
40 legal fees incurred, and other expenses involved in his defense. This reim-  
41 bursement is not an independent cause of action. To award these reasonable  
42 costs, the trier of fact must find that the defendant's claim of self-defense

1 was sustained by a preponderance of the evidence. If the trier of fact makes  
2 a determination of self-defense, the judge shall determine the amount of the  
3 award.

4 (4) Nothing in this section may be construed to limit or impair any de-  
5 fense to civil or criminal liability otherwise available.

6 (5) Whenever the issue of self-defense under this section has been sub-  
7 mitted to a jury and the jury has found the defendant not guilty, the court  
8 shall instruct the jury to return a special verdict in substantially the fol-  
9 lowing form: "Was the finding of not guilty based upon self-defense? (an-  
10 swer yes or no)."

11 (6) Whenever the issue of self-defense under this section is decided by  
12 a judge, the judge shall consider the same questions as must be answered in  
13 the special verdict under subsection (5) of this section.

14 (7) The court shall hold a pretrial immunity hearing within fourteen  
15 (14) days after a defendant has filed a motion to dismiss on the basis of  
16 self-defense immunity as provided in subsection (1) of this section.

17 (8) In a criminal prosecution or civil action where the issue of self-  
18 defense is at issue, once a prima facie claim of self-defense immunity has  
19 been raised by the defendant at a pretrial immunity hearing, the burden of  
20 proof by clear and convincing evidence is on the party seeking to overcome  
21 the immunity provided in subsection (1) of this section.

22 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared  
23 to be severable, and if any provision of this act or the application of such  
24 provision to any person or circumstance is declared invalid for any reason,  
25 such declaration shall not affect the validity of the remaining portions of  
26 this act.

27 SECTION 3. An emergency existing therefor, which emergency is hereby  
28 declared to exist, this act shall be in full force and effect on and after its  
29 passage and approval.