

LEGISLATIVE BILL 1278

Approved by the Governor April 8, 1972

Introduced by William Skarda, Jr., 7th District; Eugene T. Mahoney, 5th District

AN ACT to make municipalities or counties liable for judgments obtained against police officers, constables, sheriffs or deputy sheriffs based on conduct during apparent performance of law enforcement duties; to permit municipalities and counties to purchase indemnification insurance therefor; to provide that there shall be no rights of restitution or subrogation against the official; to amend section 1, Legislative Bill 895, Eighty-second Legislature, First Session, 1971; to define terms; and to repeal the original section, and also section 23-1716, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. If any legal action shall be brought against any municipal police officer or constable, or county sheriff or deputy sheriff, based upon the conduct of such official while in the performance of law enforcement duties, the municipality or county which employs such official shall defend such official against such action and if final judgment is rendered against such official then such municipality or county shall pay such judgment in his behalf and shall have no right to restitution from such official. Any municipality or county shall have the right to purchase insurance to indemnify itself in advance against the possibility of such loss under the provisions of this section, and the insurance company shall have no right of subrogation against the official.

Sec. 2. That section 1, Legislative Bill 895, Eighty-second Legislature, First Session, 1971, be amended to read as follows:

Section 1. As used in this act, unless the context otherwise requires:

(1) Unlawful force shall mean force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense such

as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status; not amounting to a privilege to use the force;

(2) Assent shall mean consent, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm;

(3) Deadly force shall mean force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, shall not constitute deadly force;

(4) Actor shall mean any person who uses force in such a manner as to attempt to invoke the privileges and immunities afforded him by this act, except any duly authorized law enforcement officer of the State of Nebraska or its political subdivisions; and

(5) Dwelling shall mean any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging; and =

(6) Public officer shall mean any elected or appointed officer or employee of the State of Nebraska or its political subdivisions, except any duly authorized law enforcement officer of the State of Nebraska or its political subdivisions.

Sec. 3. That original section 1, Legislative Bill 895, Eighty-second Legislature, First Session, 1971, and also section 23-1716, Reissue Revised Statutes of Nebraska, 1943, are repealed.