

FIRST REGULAR SESSION

HOUSE BILL NO. 363

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPARKS.

0365H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 563.016 and 563.031, RSMo, and to enact in lieu thereof two new sections relating to the use of self-defense.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 563.016 and 563.031, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 563.031 and 563.085, to read as follows:

563.031. 1. A person may, subject to the provisions of subsection 2 of this section,
2 use physical force upon another person when and to the extent he or she reasonably believes
3 such force to be necessary to defend himself or herself or a third person from what he or she
4 reasonably believes to be the use or imminent use of unlawful force by such other person,
5 unless:

6 (1) The actor was the initial aggressor; except that in such case his or her use of force
7 is nevertheless justifiable provided:

8 (a) He or she has withdrawn from the encounter and effectively communicated such
9 withdrawal to such other person but the latter persists in continuing the incident by the use or
10 threatened use of unlawful force; or

11 (b) He or she is a law enforcement officer and as such is an aggressor pursuant to
12 section 563.046; or

13 (c) The aggressor is justified under some other provision of this chapter or other
14 provision of law;

15 (2) Under the circumstances as the actor reasonably believes them to be, the person
16 whom he or she seeks to protect would not be justified in using such protective force;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (3) The actor was attempting to commit, committing, or escaping after the
18 commission of a forcible felony.

19 2. A person shall not use deadly force upon another person under the circumstances
20 specified in subsection 1 of this section unless:

21 (1) He or she reasonably believes that such deadly force is necessary to protect
22 himself, or herself or her unborn child, or another against death, serious physical injury, or
23 any forcible felony;

24 (2) Such force is used against a person who unlawfully enters, remains after
25 unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully
26 occupied by such person; or

27 (3) Such force is used against a person who unlawfully enters, remains after
28 unlawfully entering, or attempts to unlawfully enter private property that is owned or leased
29 by an individual, or is occupied by an individual who has been given specific authority by the
30 property owner to occupy the property, claiming a justification of using protective force under
31 this section.

32 3. A person does not have a duty to retreat:

33 (1) From a dwelling, residence, or vehicle where the person is not unlawfully entering
34 or unlawfully remaining;

35 (2) From private property that is owned or leased by such individual; or

36 (3) If the person is in any other location such person has the right to be.

37 4. The justification afforded by this section extends to the use of physical restraint as
38 protective force provided that the actor takes all reasonable measures to terminate the restraint
39 as soon as it is reasonable to do so.

40 5. ~~[The defendant shall have the burden of injecting the issue of justification under~~
41 ~~this section. If a defendant asserts that his or her use of force is described under subdivision~~
42 ~~(2) of subsection 2 of this section, the burden shall then be on the state to prove beyond a~~
43 ~~reasonable doubt that the defendant did not reasonably believe that the use of such force was~~
44 ~~necessary to defend against what he or she reasonably believed was the use or imminent use~~
45 ~~of unlawful force]~~ **There shall be a presumption of reasonableness under this section that**
46 **the defendant believed such force was necessary to defend himself or herself or a third**
47 **person from what he or she believed to be the use or imminent use of unlawful force by**
48 **another person.**

563.085. 1. A person who uses or threatens to use force pursuant to section
2 **563.031 is justified in such conduct and is immune from criminal prosecution and civil**
3 **action for the use or threatened use of such force by the person, personal representative,**
4 **or heirs of the person against whom the force was used or threatened, unless:**

5 **(1) The person against whom force was used or threatened was a law**
 6 **enforcement officer who was acting in the performance of his or her official duties and**
 7 **the officer identified himself or herself in accordance with any applicable law or the**
 8 **person using or threatening to use force knew or reasonably should have known that the**
 9 **person was a law enforcement officer; and**

10 **(2) The force used or threatened occurred in a location readily accessible to the**
 11 **public or a place of public accommodation.**

12

13 **As used in this subsection, the term "criminal prosecution" includes arresting, detaining**
 14 **in custody, and charging or prosecuting the defendant.**

15 **2. A law enforcement agency may use standard procedures for investigating the**
 16 **use or threatened use of force as described in subsection 1 of this section, but the agency**
 17 **shall not arrest the person for using or threatening to use force unless the agency**
 18 **determines that there is probable cause that the force that was used or threatened was**
 19 **unlawful.**

20 **3. In a criminal prosecution or civil action, once a prima facie claim of self-**
 21 **defense immunity has been raised by the defendant at a pretrial immunity hearing, the**
 22 **burden of proof by clear and convincing evidence is on the party seeking to overcome**
 23 **the immunity provided in subsection 1 of this section.**

2 ~~[563.016. The fact that conduct is justified under this chapter does not~~
 3 ~~abolish or impair any remedy for such conduct which is available in any civil~~
~~actions.]~~

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