

SENATE BILL NO. 1104

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

5436S.01I

ADRIANE D. CROUSE, Secretary

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
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 563.031 and 563.085, to read as follows:

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

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

11 (a) He or she has withdrawn from the encounter and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

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

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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

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

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

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

36 (3) Such force is used against a person who unlawfully
37 enters, remains after unlawfully entering, or attempts to
38 unlawfully enter private property that is owned or leased by
39 an individual, or is occupied by an individual who has been
40 given specific authority by the property owner to occupy the
41 property, claiming a justification of using protective force
42 under this section.

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

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

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

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

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

54 5. [The defendant shall have the burden of injecting
55 the issue of justification under this section. If a
56 defendant asserts that his or her use of force is described
57 under subdivision (2) of subsection 2 of this section, the
58 burden shall then be on the state to prove beyond a
59 reasonable doubt that the defendant did not reasonably
60 believe that the use of such force was necessary to defend
61 against what he or she reasonably believed was the use or
62 imminent use of unlawful force] **There shall be a presumption**
63 **of reasonableness under this section that the defendant**
64 **believed such force was necessary to defend himself or**
65 **herself or a third person from what he or she believed to be**
66 **the use or imminent use of unlawful force by another person.**

 563.085. 1. A person who uses or threatens to use
2 force pursuant to section 563.031 is justified in such
3 conduct and is immune from criminal prosecution and civil
4 action for the use or threatened use of such force by the
5 person, personal representative, or heirs of the person
6 against whom the force was used or threatened, unless the
7 person against whom force was used or threatened is a law
8 enforcement officer who was acting in the performance of his
9 or her official duties and the officer identified himself or
10 herself in accordance with any applicable law or the person
11 using or threatening to use force knew or reasonably should
12 have known that the person was a law enforcement officer.
13 As used in this subsection, the term "criminal prosecution"
14 includes arresting, detaining in custody, and charging or
15 prosecuting the defendant.

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

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

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

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