

By: Driver

H.B. No. 3296

A BILL TO BE ENTITLED

AN ACT

relating to the use of force or deadly force in defense of a person.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 9.01, Penal Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "Habitation" has the meaning assigned by Section 30.01.

(5) "Vehicle" has the meaning assigned by Section 30.01.

SECTION 2. Section 9.31, Penal Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor ~~[he]~~ reasonably believes the force is immediately necessary to protect the actor ~~[himself]~~ against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, at the time the actor used the force; and

(2) knew or had reason to believe that the person against whom the force was used:

1 (A) unlawfully entered, or was attempting to
2 enter unlawfully, the actor's habitation, vehicle, or place of
3 business or employment;

4 (B) unlawfully removed, or was attempting to
5 remove unlawfully, the actor from the actor's habitation, vehicle,
6 or place of business or employment; or

7 (C) was committing or attempting to commit
8 aggravated kidnapping, murder, sexual assault, aggravated sexual
9 assault, robbery, or aggravated robbery.

10 (e) A person is not required to retreat before using force
11 as described by this section if the person:

12 (1) is licensed to carry a concealed handgun under
13 Subchapter H, Chapter 411, Government Code, at the time the actor
14 uses the force;

15 (2) has a right to be present at the location where the
16 force is used;

17 (3) has not provoked the person against whom the force
18 is used; and

19 (4) is not engaged in criminal activity at the time the
20 force is used.

21 (f) For purposes of Subsection (a), in determining whether
22 an actor described by Subsection (e) reasonably believed that the
23 use of force was necessary, a finder of fact may not consider
24 whether the actor failed to retreat.

25 SECTION 3. Section 9.32, Penal Code, is amended to read as
26 follows:

27 Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person

1 is justified in using deadly force against another:

2 (1) if the actor [~~he~~] would be justified in using force
3 against the other under Section 9.31; and

4 (2) [~~if a reasonable person in the actor's situation~~
5 ~~would not have retreated; and~~

6 [~~(3)~~] when and to the degree the actor [~~he~~] reasonably
7 believes the deadly force is immediately necessary:

8 (A) to protect the actor [~~himself~~] against the
9 other's use or attempted use of unlawful deadly force; or

10 (B) to prevent the other's imminent commission of
11 aggravated kidnapping, murder, sexual assault, aggravated sexual
12 assault, robbery, or aggravated robbery.

13 (b) The actor's belief under Subsection (a)(2) that the
14 deadly force was immediately necessary as described by that
15 subdivision is presumed to be reasonable if the actor:

16 (1) was licensed to carry a concealed handgun under
17 Subchapter H, Chapter 411, Government Code, at the time the actor
18 used the deadly force; and

19 (2) knew or had reason to believe that the person
20 against whom the deadly force was used:

21 (A) unlawfully entered, or was attempting to
22 enter unlawfully, the actor's habitation, vehicle, or place of
23 business or employment;

24 (B) unlawfully removed, or was attempting to
25 remove unlawfully, the actor from the actor's habitation, vehicle,
26 or place of business or employment; or

27 (C) was committing or attempting to commit an

1 offense described by Subsection (a)(2)(B) [~~The requirement imposed~~
2 ~~by Subsection (a)(2) does not apply to an actor who uses force~~
3 ~~against a person who is at the time of the use of force committing an~~
4 ~~offense of unlawful entry in the habitation of the actor]~~.

5 (c) A person is not required to retreat before using deadly
6 force as described by this section if the person:

7 (1) is licensed to carry a concealed handgun under
8 Subchapter H, Chapter 411, Government Code, at the time the actor
9 uses the deadly force;

10 (2) has a right to be present at the location where the
11 deadly force is used;

12 (3) has not provoked the person against whom the
13 deadly force is used; and

14 (4) is not engaged in criminal activity at the time the
15 deadly force is used.

16 (d) For purposes of Subsection (a)(2), in determining
17 whether an actor described by Subsection (c) reasonably believed
18 that the use of deadly force was necessary, a finder of fact may not
19 consider whether the actor failed to retreat.

20 SECTION 4. Section 83.001, Civil Practice and Remedies
21 Code, is amended to read as follows:

22 Sec. 83.001. AFFIRMATIVE DEFENSE. It is an affirmative
23 defense to a civil action for damages for personal injury or death
24 that the defendant, at the time the cause of action arose, was
25 justified in using force or deadly force under Subchapter C,
26 Chapter 9 [~~Section 9.32~~], Penal Code [~~, against a person who at the~~
27 ~~time of the use of force was committing an offense of unlawful entry~~

1 ~~in the habitation of the defendant]~~.

2 SECTION 5. (a) Sections 9.31 and 9.32, Penal Code, as
3 amended by this Act, apply only to an offense committed on or after
4 the effective date of this Act. An offense committed before the
5 effective date of this Act is covered by the law in effect when the
6 offense was committed, and the former law is continued in effect for
7 this purpose. For the purposes of this subsection, an offense is
8 committed before the effective date of this Act if any element of
9 the offense occurs before the effective date.

10 (b) Section 83.001, Civil Practice and Remedies Code, as
11 amended by this Act, applies only to a cause of action that accrues
12 on or after the effective date of this Act. An action that accrued
13 before the effective date of this Act is governed by the law in
14 effect at the time the action accrued, and that law is continued in
15 effect for that purpose.

16 SECTION 6. This Act takes effect September 1, 2007.