

By: Wentworth, et al.

S.B. No. 378

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

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

1 (B) unlawfully and with force removed, or was
2 attempting to remove unlawfully and with force, the actor from the
3 actor's habitation, vehicle, or place of business or employment; or

4 (C) was committing or attempting to commit
5 aggravated kidnapping, murder, sexual assault, aggravated sexual
6 assault, robbery, or aggravated robbery;

7 (2) did not provoke the person against whom the force
8 was used; and

9 (3) was not otherwise engaged in criminal activity,
10 other than a Class C misdemeanor that is a violation of a law or
11 ordinance regulating traffic at the time the force was used.

12 (e) A person who has a right to be present at the location
13 where the force is used, who has not provoked the person against
14 whom the force is used, and who is not engaged in criminal activity
15 at the time the force is used is not required to retreat before
16 using force as described by this section.

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

21 SECTION 3. Section 9.32, Penal Code, is amended to read as
22 follows:

23 Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person
24 is justified in using deadly force against another:

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

27 (2) [~~if a reasonable person in the actor's situation~~

1 ~~would not have retreated, and~~

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

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

6 (B) to prevent the other's imminent commission of
7 aggravated kidnapping, murder, sexual assault, aggravated sexual
8 assault, robbery, or aggravated robbery.

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

12 (1) knew or had reason to believe that the person
13 against whom the deadly force was used:

14 (A) unlawfully and with force entered, or was
15 attempting to enter unlawfully and with force, the actor's occupied
16 habitation, vehicle, or place of business or employment;

17 (B) unlawfully and with force removed, or was
18 attempting to remove unlawfully and with force, the actor from the
19 actor's habitation, vehicle, or place of business or employment; or

20 (C) was committing or attempting to commit an
21 offense described by Subsection (a)(2)(B);

22 (2) did not provoke the person against whom the force
23 was used; and

24 (3) was not otherwise engaged in criminal activity,
25 other than a Class C misdemeanor that is a violation of a law or
26 ordinance regulating traffic at the time the force was used

27 ~~[requirement imposed by Subsection (a)(2) does not apply to an actor~~

1 ~~who uses force against a person who is at the time of the use of~~
2 ~~force committing an offense of unlawful entry in the habitation of~~
3 ~~the actor].~~

4 (c) A person who has a right to be present at the location
5 where the deadly force is used, who has not provoked the person
6 against whom the deadly force is used, and who is not engaged in
7 criminal activity at the time the deadly force is used is not
8 required to retreat before using deadly force as described by this
9 section.

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

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

16 Sec. 83.001. CIVIL IMMUNITY [~~AFFIRMATIVE DEFENSE~~]. A [~~It~~
17 ~~is an affirmative defense to a civil action for damages for personal~~
18 ~~injury or death that the]~~ defendant who uses force or [~~, at the time~~
19 ~~the cause of action arose, was justified in using]~~ deadly force that
20 is justified under Chapter 9 [Section 9.32], Penal Code, is immune
21 from civil liability for personal injury or death that results from
22 the defendant's [~~against a person who at the time of the]~~ use of
23 force or deadly force, as applicable [~~was committing an offense of~~
24 ~~unlawful entry in the habitation of the defendant].~~

25 SECTION 5. (a) Sections 9.31 and 9.32, Penal Code, as
26 amended by this Act, apply only to an offense committed on or after
27 the effective date of this Act. An offense committed before the

1 effective date of this Act is covered by the law in effect when the
2 offense was committed, and the former law is continued in effect for
3 this purpose. For the purposes of this subsection, an offense is
4 committed before the effective date of this Act if any element of
5 the offense occurs before the effective date.

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

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