

1-1 By: Wentworth, et al. S.B. No. 378  
1-2 (In the Senate - Filed January 31, 2007; February 21, 2007,  
1-3 read first time and referred to Committee on Jurisprudence;  
1-4 March 5, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 5, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 378 By: Watson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the use of force or deadly force in defense of a person.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 9.01, Penal Code, is amended by adding  
1-13 Subdivisions (4) and (5) to read as follows:

1-14 (4) "Habitation" has the meaning assigned by Section  
1-15 30.01.

1-16 (5) "Vehicle" has the meaning assigned by Section  
1-17 30.01.

1-18 SECTION 2. Section 9.31, Penal Code, is amended by amending  
1-19 Subsection (a) and adding Subsections (e) and (f) to read as  
1-20 follows:

1-21 (a) Except as provided in Subsection (b), a person is  
1-22 justified in using force against another when and to the degree the  
1-23 actor [he] reasonably believes the force is immediately necessary  
1-24 to protect the actor [himself] against the other's use or attempted  
1-25 use of unlawful force. The actor's belief that the force was  
1-26 immediately necessary as described by this subsection is presumed  
1-27 to be reasonable if the actor:

1-28 (1) knew or had reason to believe that the person  
1-29 against whom the force was used:

1-30 (A) unlawfully and with force entered, or was  
1-31 attempting to enter unlawfully and with force, the actor's occupied  
1-32 habitation, vehicle, or place of business or employment;

1-33 (B) unlawfully and with force removed, or was  
1-34 attempting to remove unlawfully and with force, the actor from the  
1-35 actor's habitation, vehicle, or place of business or employment; or

1-36 (C) was committing or attempting to commit  
1-37 aggravated kidnapping, murder, sexual assault, aggravated sexual  
1-38 assault, robbery, or aggravated robbery;

1-39 (2) did not provoke the person against whom the force  
1-40 was used; and

1-41 (3) was not otherwise engaged in criminal activity,  
1-42 other than a Class C misdemeanor that is a violation of a law or  
1-43 ordinance regulating traffic at the time the force was used.

1-44 (e) A person who has a right to be present at the location  
1-45 where the force is used, who has not provoked the person against  
1-46 whom the force is used, and who is not engaged in criminal activity  
1-47 at the time the force is used is not required to retreat before  
1-48 using force as described by this section.

1-49 (f) For purposes of Subsection (a), in determining whether  
1-50 an actor described by Subsection (e) reasonably believed that the  
1-51 use of force was necessary, a finder of fact may not consider  
1-52 whether the actor failed to retreat.

1-53 SECTION 3. Section 9.32, Penal Code, is amended to read as  
1-54 follows:

1-55 Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person  
1-56 is justified in using deadly force against another:

1-57 (1) if the actor [he] would be justified in using force  
1-58 against the other under Section 9.31; and

1-59 ~~(2) [if a reasonable person in the actor's situation~~  
1-60 ~~would not have retreated; and~~

1-61 ~~[3)]~~ when and to the degree the actor [he] reasonably  
1-62 believes the deadly force is immediately necessary:

1-63 (A) to protect the actor [himself] against the

2-1 other's use or attempted use of unlawful deadly force; or  
2-2 (B) to prevent the other's imminent commission of  
2-3 aggravated kidnapping, murder, sexual assault, aggravated sexual  
2-4 assault, robbery, or aggravated robbery.

2-5 (b) The actor's belief under Subsection (a)(2) that the  
2-6 deadly force was immediately necessary as described by that  
2-7 subdivision is presumed to be reasonable if the actor:

2-8 (1) knew or had reason to believe that the person  
2-9 against whom the deadly force was used:

2-10 (A) unlawfully and with force entered, or was  
2-11 attempting to enter unlawfully and with force, the actor's occupied  
2-12 habitation, vehicle, or place of business or employment;

2-13 (B) unlawfully and with force removed, or was  
2-14 attempting to remove unlawfully and with force, the actor from the  
2-15 actor's habitation, vehicle, or place of business or employment; or

2-16 (C) was committing or attempting to commit an  
2-17 offense described by Subsection (a)(2)(B);

2-18 (2) did not provoke the person against whom the force  
2-19 was used; and

2-20 (3) was not otherwise engaged in criminal activity,  
2-21 other than a Class C misdemeanor that is a violation of a law or  
2-22 ordinance regulating traffic at the time the force was used  
2-23 [requirement imposed by Subsection (a)(2) does not apply to an actor  
2-24 who uses force against a person who is at the time of the use of  
2-25 force committing an offense of unlawful entry in the habitation of  
2-26 the actor].

2-27 (c) A person who has a right to be present at the location  
2-28 where the deadly force is used, who has not provoked the person  
2-29 against whom the deadly force is used, and who is not engaged in  
2-30 criminal activity at the time the deadly force is used is not  
2-31 required to retreat before using deadly force as described by this  
2-32 section.

2-33 (d) For purposes of Subsection (a)(2), in determining  
2-34 whether an actor described by Subsection (c) reasonably believed  
2-35 that the use of deadly force was necessary, a finder of fact may not  
2-36 consider whether the actor failed to retreat.

2-37 SECTION 4. Section 83.001, Civil Practice and Remedies  
2-38 Code, is amended to read as follows:

2-39 Sec. 83.001. CIVIL IMMUNITY [~~AFFIRMATIVE DEFENSE~~]. A [~~It~~  
2-40 ~~is an affirmative defense to a civil action for damages for personal~~  
2-41 ~~injury or death that the]~~ defendant who uses force or [~~at the time~~  
2-42 ~~the cause of action arose, was justified in using]~~ deadly force that  
2-43 is justified under Chapter 9 [Section 9.32], Penal Code, is immune  
2-44 from civil liability for personal injury or death that results from  
2-45 the defendant's [against a person who at the time of the] use of  
2-46 force or deadly force, as applicable [was committing an offense of  
2-47 unlawful entry in the habitation of the defendant].

2-48 SECTION 5. (a) Sections 9.31 and 9.32, Penal Code, as  
2-49 amended by this Act, apply only to an offense committed on or after  
2-50 the effective date of this Act. An offense committed before the  
2-51 effective date of this Act is covered by the law in effect when the  
2-52 offense was committed, and the former law is continued in effect for  
2-53 this purpose. For the purposes of this subsection, an offense is  
2-54 committed before the effective date of this Act if any element of  
2-55 the offense occurs before the effective date.

2-56 (b) Section 83.001, Civil Practice and Remedies Code, as  
2-57 amended by this Act, applies only to a cause of action that accrues  
2-58 on or after the effective date of this Act. An action that accrued  
2-59 before the effective date of this Act is governed by the law in  
2-60 effect at the time the action accrued, and that law is continued in  
2-61 effect for that purpose.

2-62 SECTION 6. This Act takes effect September 1, 2007.

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