

By: Coleman

H.B. No. 2708

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 9.41, Penal Code, is amended to read as follows:

Sec. 9.41. PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land, including a habitation on the land, or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land, including a habitation on the land, or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

SECTION 2. Section 9.42, Penal Code, is amended to read as follows:

1 Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is
2 justified in using deadly force against another to protect land,
3 including a habitation on the land, or tangible, movable property
4 if the actor:

5 (1) is [~~if he would be~~] justified in using force
6 against the other under Section 9.41; [~~and~~]

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

9 (A) to prevent the other's imminent commission of
10 arson, burglary, robbery, aggravated robbery, theft during the
11 nighttime, or criminal mischief during the nighttime; or

12 (B) to prevent the other who is fleeing
13 immediately after committing burglary, robbery, aggravated
14 robbery, or theft during the nighttime from escaping with the
15 property; and

16 (3) [~~he~~] reasonably believes that:

17 (A) the land or property cannot be protected or
18 recovered by any other means; or

19 (B) the use of force other than deadly force to
20 protect or recover the land or property would expose the actor or
21 another to a substantial risk of death or serious bodily injury.

22 SECTION 3. Sections 9.32(a) and (c), Penal Code, are
23 amended to read as follows:

24 (a) A person is justified in using deadly force against
25 another if the actor:

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

1 (2) is unable to safely retreat; and

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

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

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

9 (c) A person who is in the person's own habitation and ~~[has a~~
10 ~~right to be present at the location where the deadly force is used,~~
11 who has not provoked the person against whom the deadly force is
12 used~~[, and who is not engaged in criminal activity at the time the~~
13 ~~deadly force is used]~~ is not required to retreat before using deadly
14 force as described by this section.

15 SECTION 4. Sections 9.32(b) and (d), Penal Code, are
16 repealed.

17 SECTION 5. The change in law made by this Act applies only
18 to an offense committed on or after the effective date of this Act.
19 An offense committed before the effective date of this Act is
20 governed by the law in effect on the date the offense was committed,
21 and the former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 6. This Act takes effect September 1, 2017.