

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE BILL NOS. 1461, 1375,
1110 & 1103**
93RD GENERAL ASSEMBLY

Reported from the Special Committee on General Laws March 2, 2006 with recommendation that House Committee Substitute for House Bill Nos. 1461, 1375, 1110 & 1103 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4370L.09C

AN ACT

To repeal sections 563.011, 563.031, 563.036, and 563.041, RSMo, and to enact in lieu thereof four new sections relating to the use of force.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 563.011, 563.031, 563.036, and 563.041, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 563.011, 563.031, 563.041,
3 and 563.074 to read as follows:

563.011. As used in this chapter **the following terms shall mean:**

2 (1) "Deadly force" means physical force which the actor uses with the purpose of causing
3 or which he knows to create a substantial risk of causing death or serious physical injury[.];

4 (2) "Dwelling" [means], any building [or], inhabitable structure, [though movable or
5 temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.]
6 **or conveyance, of any kind, whether the building, inhabitable structure, or conveyance is**
7 **temporary or permanent, mobile or immobile, which has a roof over it, including a tent,**
8 **and is designed to be occupied by people lodging therein at night;**

9 (3) "Forcible felony", any felony which involves the use or threat of physical force
10 **or violence against any individual including but not limited to murder, robbery, burglary,**
11 **arson, kidnapping, assault, and any forcible sexual offense;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 12 [(3)] **(4) "Premises", includes any building, inhabitable structure and any real property[.**
13 **(4)];**
- 14 **(5) "Private person" [means], any person other than a law enforcement officer[.];**
- 15 **(6) "Remain after unlawfully entering", to remain in or upon premises after**
16 **unlawfully entering as defined in this section;**
- 17 **(7) "Residence", a dwelling in which a person resides either temporarily or**
18 **permanently or is visiting as an invited guest;**
- 19 **(8) "Unlawfully enter", a person unlawfully enters in or upon premises when he**
20 **or she enters such premises and is not licensed or privileged to do so. A person who,**
21 **regardless of his or her purpose, enters in or upon premises which are at the time open to**
22 **the public does so with license unless he or she defies a lawful order not to enter, personally**
23 **communicated to him or her by the owner of such premises or by another authorized**
24 **person. A license to enter in a building which is only partly open to the public is not a**
25 **license to enter in that part of the building which is not open to the public.**

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

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

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

10 (b) He **or she** is a law enforcement officer and as such is an aggressor pursuant to section
11 563.046; or

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

14 (2) Under the circumstances as the actor reasonably believes them to be, the person
15 whom he **or she** seeks to protect would not be justified in using such protective force[.];

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

18 2. A person may not use deadly force upon another person under the circumstances
19 specified in subsection 1 of this section unless:

20 **(1) He or she reasonably believes that such deadly force is necessary to protect himself**
21 **or herself or another against death, serious physical injury, [rape, sodomy or kidnapping or**
22 **serious physical injury through robbery, burglary or arson] or any forcible felony; or**

23 **(2) Such force is used against a person who unlawfully enters, remains after**
24 **unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle**
25 **lawfully occupied by such person;**

26 **3. A person does not have a duty to retreat from a dwelling, residence, or vehicle,**
27 **where the person is not unlawfully entering or unlawfully remaining.**

28 **[3.] 4.** The justification afforded by this section extends to the use of physical restraint
29 as protective force provided that the actor takes all reasonable measures to terminate the restraint
30 as soon as it is reasonable to do so.

31 **[4.] 5.** The defendant shall have the burden of injecting the issue of justification under
32 this section.

563.041. 1. A person may, subject to the limitations of subsection 2, use physical force
2 upon another person when and to the extent that he **or she** reasonably believes it necessary to
3 prevent what he **or she** reasonably believes to be the commission or attempted commission by
4 such person of stealing, property damage or tampering in any degree.

5 2. A person may use deadly force under circumstances described in subsection 1 only
6 when such use of deadly force is authorized under other sections of this chapter.

7 3. The justification afforded by this section extends to the use of physical restraint as
8 protective force provided that the actor takes all reasonable measures to terminate the restraint
9 as soon as it is reasonable to do so.

10 4. The defendant shall have the burden of injecting the issue of justification under this
11 section.

563.074. 1. **Notwithstanding the provisions of section 563.016, a person who uses**
2 **force as described in sections 563.031, 563.041, 563.046, 563.051, 563.056, and 563.061 is**
3 **justified in using such force and is immune from criminal prosecution and civil action for**
4 **the use of such force.**

5 **2. The court shall award attorney's fees, court costs, and all reasonable expenses**
6 **incurred by the defendant in defense of any civil action brought by a plaintiff if the court**
7 **finds that the defendant is immune from prosecution as provided in subsection 1 of this**
8 **section.**

[563.036. 1. A person in possession or control of premises or a person
2 who is licensed or privileged to be thereon, may, subject to the provisions of
3 subsection 2 of this section, use physical force upon another person when and to
4 the extent that he reasonably believes it necessary to prevent or terminate what
5 he reasonably believes to be the commission or attempted commission of the
6 crime of trespass by the other person.

7 2. A person may use deadly force under circumstances described in
8 subsection 1 of this section only:

9 (1) When such use of deadly force is authorized under other sections of
10 this chapter; or

11 (2) When he reasonably believes it necessary to prevent what he
12 reasonably believes to be an attempt by the trespasser to commit arson or
13 burglary upon his dwelling; or

14 (3) When entry into the premises is made or attempted in a violent and
15 tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that
16 the entry is attempted or made for the purpose of assaulting or offering physical
17 violence to any person or being in the premises and he reasonably believes that
18 force is necessary to prevent the commission of a felony.

19 3. The defendant shall have the burden of injecting the issue of
20 justification under this section.]

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