

SECOND REGULAR SESSION

# HOUSE BILL NO. 1461

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RUESTMAN (Sponsor), WOOD, JONES, WILSON (130), WHORTON, MUNZLINGER, FAITH, HOBBS, SELF, WILSON (119), MOORE, SMITH (150), DIXON, PHILLIPS, DOUGHERTY, EMERY, WASSON, SMITH (118), SANDER, MAY, NOLTE, BIVINS, WRIGHT (159), CHINN, QUINN, VILLA, AVERY, HUNTER, DUSENBERG, BEHNEN, ERVIN, DETHROW, NANCE, MUSCHANY, WELLS, SCHAAF, FRANZ, DENISON, CHAPPELLE-NADAL, FLOOK, NIEVES, JETTON, COOPER (120), BEARDEN, ROARK, JACKSON, DAY, THRELKELD, ROBB, SCHLOTTACH, DAVIS, KINGERY, SILVEY, FISHER, SATER, SCHAD AND LEMBKE (Co-sponsors).

Read 1st time January 19, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4370L.03I

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### AN ACT

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

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

Section A. Sections 563.011, 563.031, and 563.041, RSMo, are repealed and five new  
2 sections enacted in lieu thereof, to be known as sections 563.011, 563.031, 563.041, 563.042,  
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, including any attached porch, whether the building,**  
7 **inhabitable structure, or conveyance is temporary or permanent, mobile or immobile,**  
8 **which has a roof over it, including a tent, and is designed to be occupied by people lodging**

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.

9 therein at night, together with the curtilage of the building, inhabitable structure, or conveyance;  
10 (3) "Enter unlawfully or remain unlawfully", a person enters unlawfully or  
11 remains unlawfully in or upon premises when he or she is not licensed or privileged to do  
12 so. A person who, regardless of his or her purpose, enters or remains in or upon premises  
13 which are at the time open to the public does so with license and privilege unless he or she  
14 defies a lawful order not to enter or remain, personally communicated to him or her by the  
15 owner of such premises or by other authorized person. A license or privilege to enter or  
16 remain in a building which is only partly open to the public is not a license or privilege to  
17 enter or remain in that part of the building which is not open to the public;

18 (4) "Forcible felony", any felony which involves the use or threat of physical force  
19 or violence against any individual including but not limited to murder, robbery, burglary,  
20 arson, kidnapping, assault, and any sexual offense;

21 (5) "Inhabitable structure", includes a ship, trailer, sleeping car, airplane, or other  
22 vehicle or structure:

23 (a) Where any person lives or carries on business or other calling; or

24 (b) Where people assemble for purposes of business, government, education,  
25 religion, entertainment, or public transportation; or

26 (c) Which is used for overnight accommodation of persons.

27  
28 Any such vehicle or structure is "inhabitable" regardless of whether a person is actually  
29 present;

30 [(3)] (6) "Premises", includes any building, inhabitable structure and any real property.

31 [(4)] (7) "Private person" [means], any person other than a law enforcement officer[.]:

32 (8) "Residence", a dwelling in which a person resides either temporarily or  
33 permanently or is visiting as an invited guest.

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 he **or she** reasonably believes that such deadly  
20 force is necessary to protect himself **or herself** or another against death, serious physical injury,  
21 rape, sodomy or kidnapping or serious physical injury through robbery, burglary or arson; **or**  
22 **against a person who unlawfully enters, remains, or attempts to enter a dwelling, residence,**  
23 **or vehicle lawfully occupied by the actor.**

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

27 4. The defendant shall have the burden of injecting the issue of justification under this  
28 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. **A person does not have a duty to retreat if the person is in a place where he or**  
11 **she is not entering or remaining unlawfully.**

12 5. The defendant shall have the burden of injecting the issue of justification under this  
13 section.

**563.042. A person does not have a duty to retreat from a dwelling, residence,**  
2 **vehicle, or place where the person is not entering or remaining unlawfully.**

**563.074. 1. Notwithstanding the provisions of section 563.016, a person who uses**  
2 **force as described in sections 563.031, 563.041, 563.042, 563.046, 563.051, 563.056, and**  
3 **563.061 is justified in using such force and is immune from criminal prosecution and civil**  
4 **action for the use of such force.**

5           **2. The court shall award attorney's fees, court costs, compensation for loss of**  
6 **income, and all expenses incurred by the defendant in defense of any civil action brought**  
7 **by a plaintiff if the court finds that the defendant is immune from prosecution as provided**  
8 **in subsection 1 of this section. The plaintiff and the plaintiff's attorney are jointly and**  
9 **severally liable to the defendant for the payment of fees and costs.**

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