



State of Wisconsin
2011 - 2012 LEGISLATURE



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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2011 ASSEMBLY BILL 69**

June 8, 2011 – Offered by Representative KAUFERT.

1 **AN ACT** *to create* 895.62 and 939.48 (1m) of the statutes; **relating to:**
2 self-defense.

Analysis by the Legislative Reference Bureau

In general, a person who uses force in self-defense or in the defense of another person may not be convicted of a crime stemming from that use of force. This law applies only when: 1) the amount of force used is reasonable; and 2) the person uses that force to prevent or stop what he or she reasonably believes is an unlawful interference with himself or herself or another person, such as the crime of battery. Current law specifies that a person may use force that is intended or likely to cause the death of or great bodily harm to another individual only if the person reasonably believes that using such force is necessary to prevent the imminent death of or great bodily harm to himself or herself or another person.

Under this substitute amendment, if a person used defensive force that was intended or likely to cause death or great bodily harm, a court in a criminal case against the person must presume that the person reasonably believed that the force was necessary to prevent death or great bodily harm to himself or herself or to another person if: 1) the individual against whom the force was used was in the process of unlawfully entering, or had already unlawfully entered, the dwelling, motor vehicle, or, in the case of a business owner or operator, place of business of the person who used the force; 2) the person was present in that dwelling, motor vehicle, or place of business; and 3) the person knew or reasonably believed that an unlawful

entry was occurring or had occurred. This presumption, however, does not apply if: 1) the person who used the force was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should have been known to be a peace officer) and was entering the dwelling, motor vehicle, or place of business in the performance of his or her official duties.

Under the substitute amendment, a person who uses force that is intended or likely to cause death or great bodily harm is immune from civil liability if the person reasonably believed that the force was necessary to prevent death or bodily harm to himself or herself or to another person and if: 1) the individual against whom the force was used was in the process of unlawfully entering, or had already unlawfully entered, the dwelling, motor vehicle, or place of business of the person who used the force; 2) the person who used the force was present in the dwelling, motor vehicle, or place of business; and 3) the person who used the force knew or had reason to believe that an unlawful entry was occurring or had occurred. Under the substitute amendment for purposes of civil immunity, a person is not presumed to have reasonably believed that the force was necessary if: 1) the person who used the force was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should have been known to be a peace officer) and was entering the dwelling, motor vehicle, or place of business in the performance of his or her official duties.

Under the substitute amendment, if a court finds that person who is sued in civil court is immune from liability, the person is entitled to attorney fees, court costs, compensation for income loss, and other expenses the person incurred to defend himself or herself against the civil action.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.62 of the statutes is created to read:

2 **895.62 Use of force in response to unlawful entry into a dwelling, motor**
3 **vehicle, or place of business; civil liability immunity.** (1) In this section:

4 (a) “Actor” means a person who uses force that is intended or likely cause death
5 or great bodily harm to another person.

6 (b) “Dwelling” has the meaning given in s. 895.07 (1) (h).

7 (c) “Place of business” means a business that the actor owns or operates.

1 **(2)** Except as provided in sub. (4), an actor is immune from civil liability arising
2 out of his or her use of force that is intended or likely to cause death or great bodily
3 harm if the actor reasonably believed that the force was necessary to prevent
4 imminent death or bodily harm to himself or herself or to another person and either
5 of the following applies:

6 (a) The person against whom the force was used was in the process of
7 unlawfully entering the actor's dwelling, motor vehicle, or place of business, the actor
8 was on his or her property or present in the dwelling, motor vehicle, or place of
9 business, and the actor knew or had reason to believe that an unlawful entry was
10 occurring.

11 (b) The person against whom the force was used was in the actor's dwelling,
12 motor vehicle, or place of business after unlawfully entering it, the actor was present
13 in the dwelling, motor vehicle, or place of business, and the actor knew or had reason
14 to believe that the person had unlawfully entered the dwelling, motor vehicle, or
15 place of business.

16 **(3)** An actor is presumed to have reasonably believed that the force was
17 necessary to prevent imminent death or bodily harm to himself or herself or to
18 another person if either sub. (2) (a) or (b) applies.

19 **(4)** The presumption described in sub. (3) does not apply if any of the following
20 are true:

21 (a) The actor was engaged in a criminal activity or was using his or her
22 dwelling, motor vehicle, or place of business to further a criminal activity at the time
23 he or she used the force described in sub. (2).

24 (b) The person against whom the force was used was a peace officer who entered
25 or attempted to enter the actor's dwelling, motor vehicle, or place of business in the

1 performance of his or her official duties. This paragraph applies only if at least one
2 of the following applies:

3 1. The officer identified himself or herself to the actor before the force described
4 in sub. (2) was used by the actor.

5 2. The actor knew or reasonably should have known that the person entering
6 or attempting to enter his or her dwelling, motor vehicle, or place of business was a
7 peace officer.

8 **(5)** In any civil action, if a court finds that a person is immune from civil liability
9 under sub. (2), the court shall award the person reasonable attorney fees, costs,
10 compensation for loss of income, and other costs of the litigation reasonably incurred
11 by the person.

12 **SECTION 2.** 939.48 (1m) of the statutes is created to read:

13 939.48 **(1m)** (a) In this subsection:

14 1. "Dwelling" has the meaning given in s. 895.07 (1) (h).

15 2. "Place of business" means a business that the actor owns or operates.

16 (ar) If an actor intentionally used force that was intended or likely to cause
17 death or great bodily harm, the court shall presume that the actor reasonably
18 believed that the force was necessary to prevent imminent death or great bodily
19 harm to himself or herself if the actor makes such a claim under sub. (1) and any of
20 the following applies:

21 1. The person against whom the force was used was in the process of unlawfully
22 entering the actor's dwelling, motor vehicle, or place of business, the actor was
23 present in the dwelling, motor vehicle, or place of business, and the actor knew or
24 reasonably believed that an unlawful entry was occurring.

