

**2011 DRAFTING REQUEST**

**Assembly Amendment (AA-AB69)**

Received: **05/05/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Dean Kaufert (608) 266-5719**

By/Representing: **Adam**

May Contact:

Drafter: **phurley**

Subject: **Courts - immunity liability**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kaufert@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Immunity if a crime was committed

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**Instructions:**

If the person acted upon was committing a crime, the actor is civilly immune

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 05/06/2011	jdye 05/10/2011	jfrantze 05/10/2011	_____	sbasford 05/10/2011	sbasford 05/10/2011	

FE Sent For:

<END>

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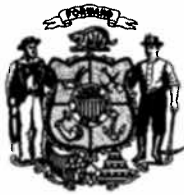
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/1	phurley	1 5/10 jld	5/10	no plz			

FE Sent For:

<END>



## 2011 ASSEMBLY BILL 69

March 30, 2011 - Introduced by Representatives KAUFERT, MURSAU, JACQUE, LEMAHIEU, ZIEGELBAUER, NASS, KERKMAN, WILLIAMS, SPANBAUER, PETRYK, KNODL, PETROWSKI, KESTELL, STEINEKE, AUGUST, LITJENS, A. OTT, DANOU, TAUCHEN, KRUG, STRACHOTA, RIPP, HONADEL, FARROW and THIESFELDT, cosponsored by Senators WANGGAARD, LEIBHAM, HOLPERIN, LAZICH, COWLES, OLSEN, VUKMIR, GROTHMAN, HANSEN, GALLOWAY, DARLING, HARSDORF, HOPPER, TAYLOR and MOULTON. Referred to Committee on Judiciary and Ethics.

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

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### *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 bill, if a person used defensive force that was intended or likely to cause death or great bodily harm, the court 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 and forcibly entering, or had already unlawfully and forcefully entered, the residence of the person who used the force; 2) the person was present in that residence; and 3) the person knew or reasonably believed that an unlawful and forcible 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 residence to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a

**ASSEMBLY BILL 69**

peace officer (or was or should have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

Under the bill, 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 great 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 and forcibly entering, or had already forcibly entered, the residence of the person who used the force; 2) the person who used the force was present in the residence; and 3) the person who used the force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred. Under the bill 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 residence 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 residence in the performance of his or her official duties.

Under the bill, 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.

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*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 and forcible entry into a  
3 residence **civil liability immunity.** (1) In this section, "actor" means a person  
4 who uses force that is intended or likely cause death or great bodily harm to another  
5 person.

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

10 either of the following applies:

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1 (a) The person against whom the force was used was in the process of  
 2 unlawfully and forcibly entering the actor's residence, the actor was present in the  
 3 residence, and the actor knew or had reason to believe that an unlawful and forcible  
 4 entry was occurring.

5 (b) The person against whom the force was used was in the actor's residence  
 6 after unlawfully and forcibly entering it, the actor was present in the residence, and  
 7 the actor knew or had reason to believe that the person had unlawfully and forcibly  
 8 entered the residence.

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

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

14 (a) The actor was engaged in a criminal activity *or* was using his or her  
 15 residence to further a criminal activity *at* the time he or she used the force described  
 16 in sub. (2).

17 (b) The person against whom the force was used was a peace officer who *was acting* *entered*  
 18 *or attempted to enter the actor's residence* in the performance of his or her official  
 19 duties. This paragraph applies only if at least one of the following applies:

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

22 2. The actor knew or reasonably should have known that the person *entering*  
 23 *or attempting to enter his or her residence* was a peace officer.

24 (5) In any civil action, if a court finds that a person is immune from civil liability  
 25 under sub. (2), the court shall award the person reasonable attorney fees, costs,

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**SECTION 1**

1 compensation for loss of income, and other costs of the litigation reasonably incurred  
2 by the person.

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

4 939.48 (1m) (a) If an actor intentionally used force that was intended or likely  
5 to cause death or great bodily harm, the court shall presume that the actor  
6 reasonably believed that the force was necessary to prevent imminent death or great  
7 bodily harm to himself or herself if the actor makes such a claim under sub. (1) and  
8 any of the following applies:

9 1. The person against whom the force was used was in the process of unlawfully  
10 and forcibly entering the actor's residence, the actor was present in the residence,  
11 and the actor knew or reasonably believed that an unlawful and forcible entry was  
12 occurring.

13 2. The person against whom the force was used was in the actor's residence  
14 after unlawfully and forcibly entering it, the actor was present in the residence, and  
15 the actor knew or reasonably believed that the person had unlawfully and forcibly  
16 entered the residence.

17 (b) The presumption described in par. (a) does not apply if any of the following  
18 applies:

19 1. The actor was engaged in a criminal activity or was using his or her residence  
20 to further a criminal activity at the time.

21 2. The person against whom the force was used was a peace officer who entered  
22 or attempted to enter the actor's residence in the performance of his or her official  
23 duties. This subdivision applies only if at least one of the following applies:

24 a. The officer identified himself or herself to the actor before the force described  
25 in par. (a) was used by the actor.





Jld

ASSEMBLY AMENDMENT,  
TO 2011 ASSEMBLY BILL 69

S-b-11  
soon  
DN

1 At the locations indicated, amend the bill as follows:

2 (B) 1. Page 2, line 2: delete "unlawful and forcible entry into a" and substitute "a  
3 criminal act". (B)

4 2. Page 2, line 3: delete "residence". (B)

5 3. Page 2, line 10: delete that line and substitute  
6 (A) NO "the person against whom the force was used was in the process of committing  
7 or attempting to commit a crime, and the actor knew or had reason to believe that  
8 a crime or attempted crime was occurring." ✓

9 4. Page 3, line 1: delete lines 1 to 8. ✓

10 5. Page 3, line 11: delete "either sub. (2) (a) or (b)" and substitute "sub. (2)". ✓

11 6. Page 3, line 14: delete "or was using his or her". ✓

12 7. Page 3, line 15: delete "residence to further a criminal activity". ✓





DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBa0788/1dn

PJH: :...

date

JLD

Adam,

\* Please review this draft *amendment* to ensure that it is consistent with your intent. This amendment changes the provisions related to civil immunity for using deadly force. The amendment removes references to the actor's residence from the civil immunity provisions and replaces them with a more general civil immunity if the person who was injured or killed while he or she was committing or attempting to commit any crime.

The amendment removes references to entering a residence and using a residence to further a criminal enterprise; the civil immunity and presumption of reasonableness granted by this amendment would apply anywhere a person uses deadly force against a person committing or attempting to commit a crime (unless the actor is himself committing a crime or the person against whom force was used is a law officer and the actor knew or should have known that).

Under the amendment, the provisions relating to the self-defense in a criminal case remains limited to those instances where deadly force was used in a home invasion situation. Please let me know if you have any questions or would like to discuss this draft further.

*amendment*

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.wisconsin.gov](mailto:peggy.hurley@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa0788/1dn  
PJH:jld:jf

May 10, 2011

Adam,

Please review this amendment to ensure that it is consistent with your intent. This amendment changes the provisions related to civil immunity for using deadly force. The amendment removes references to the actor's residence from the civil immunity provisions and replaces them with a more general civil immunity if the person who was injured or killed while he or she was committing or attempting to commit any crime.

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Under the amendment, the provisions relating to the self-defense in a criminal case remains limited to those instances where deadly force was used in a home invasion situation. Please let me know if you have any questions or would like to discuss this amendment further.

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