

**2011 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB69)**

Received: **06/03/2011**

Received By: **phurley**

Wanted: **Soon**

Companion to LRB:

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

By/Representing: **Adam**

May Contact:

Drafter: **phurley**

Subject: **Courts - immunity liability  
Criminal Law - miscellaneous**

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:**

Castle doctrine

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**Instructions:**

See attached

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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>
/?	phurley 06/03/2011	jdyer 06/06/2011		_____			
/1			mduchek 06/06/2011	_____	sbasford 06/06/2011	sbasford 06/06/2011	

FE Sent For:

<END>

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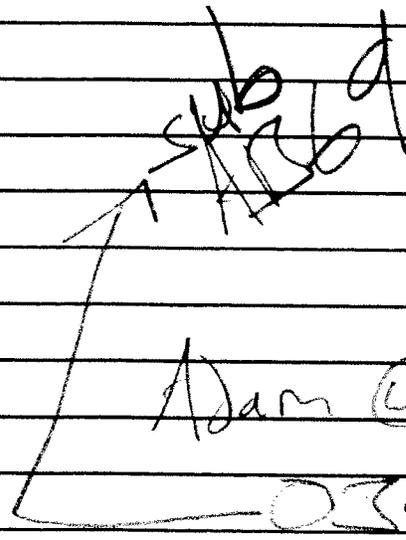
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FE Sent For:

<END>



ch. 980 Dean

Adam @

0392

Kaufert

Castle Doctrine

2 physical →

— sub to 0392

— if ~~per~~ shooter is present

anywhere on property owned

— if shot person breaks into any

building on property shooter owns

2 to Adam - any body regardless of whether shot is in it?

— mobile vehicle or bus and (60387)

— does "dwelling" v. "residence" make a dif <sup>yes, use</sup> dwelling

— unlawful removal of another person  
= justification for shooting

— ~~self defense~~ relating to self-defense



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa0787/1  
PJH:kjf:jf

ASSEMBLY AMENDMENT ,  
TO 2011 ASSEMBLY BILL 69

- 1           At the locations indicated, amend the bill as follows:
- 2           **1.** Page 2, line 3: after “**residence**” insert “, **motor vehicle, or place of**
- 3 **business**”.
- 4           **2.** Page 2, line 3: delete “section, “actor” means a person” and substitute
- 5 “section:”.
- 6           **3.** Page 2, line 4: before “who” insert:
- 7           “(a) “Actor” means a person”.
- 8           **4.** Page 2, line 5: after that line insert:
- 9           “(b) “Place of business” means a business that the actor owns or operates.”.
- 10          **5.** Page 3, line 2: after “residence,” insert “motor vehicle, or place of business,”.
- 11          **6.** Page 3, line 3: after “residence,” insert “motor vehicle, or place of business,”.
- 12          **7.** Page 3, line 5: after “residence” insert “, motor vehicle, or place of business”.

1           **8.** Page 3, line 6: after “residence,” insert “motor vehicle, or place of business.”

2           **9.** Page 3, line 8: after “residence” insert “, motor vehicle, or place of business”.

3           **10.** Page 3, line 15: after “residence” insert “, motor vehicle, or place of  
4 business”.

5           **11.** Page 3, line 18: after “residence” insert “, motor vehicle, or place of  
6 business”.

7           **12.** Page 3, line 23: after “residence” insert “, motor vehicle, or place of  
8 business”.

**Insert A**

9           **13.** Page 4, line 3: after that line insert:

10           “939.48 (1m) (am) In this subsection, “place of business” means a business that  
11 the actor owns or operates”.

12           **14.** Page 4, line 4: delete “939.48 (1m) (a)” and substitute “(ar)”.

13           **15.** Page 4, line 10: after “actor’s residence,” insert “motor vehicle, or place of  
14 business,”.

15           **16.** Page 4, line 10: after “in the residence,” insert “motor vehicle, or place of  
16 business,”.

17           **17.** Page 4, line 13: after “residence” insert “, motor vehicle, or place of  
18 business”.

19           **18.** Page 4, line 14: after “residence,” insert “motor vehicle, or place of  
20 business,”.

21           **19.** Page 4, line 16: after “residence” insert “, motor vehicle, or place of  
22 business”.





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-03327A  
PJH/jdr

keef

50136/11

1mnr

ASA to  
2011 AB-69

2011 ASSEMBLY BILL 69

DUE BY 6-7-11

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, HARS DORF, HOPPER, TAYLOR and MOULTON. Referred to Committee on Judiciary and Ethics.

Regen

- 1
- 2

AN ACT to create 895.62 and 939.48 (1m) of the statutes; relating to: the

privilege of self-defense

dwelling, motor vehicle, or, in the case of a business owner or operator, place of business

**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 law, 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

substitute amendment

dwelling, motor vehicle, or place of business

ASSEMBLY BILL 69

dwelling, motor vehicle, or place of business

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 ~~law~~, 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 ~~law~~ 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 ~~law~~, 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.

LES-use 3 times  
substitute amendment

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

dwelling, motor vehicle, or place of business

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 <sup>(A)</sup> "actor" means a person

4 who uses force that is intended or likely cause death or great bodily harm to another

5 person. <sup>(A)</sup> "Place of business" means a business that the actor owns or operates

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:

<sup>(A)</sup> (b) "Dwelling" has the meaning given in s. 895.07(1)(h).

move

ASSEMBLY BILL 69

SECTION 1

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.

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 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,

dwelling, motor vehicle, or place of business

on his or her property or

dwelling, motor vehicle, or place of business

ASSEMBLY BILL 69

Insert 4.3 ✓

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:

dwelling, motor vehicle, or place of business

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.

dwelling, motor vehicle, or place of business

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.

dwelling, motor vehicle, or place of business

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.

(a) was used by the actor.



2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0136/?ins  
.....

INSERT 4.3:

~~SECTION 1. 939.48 (1m) (a) of the statutes is created to read:~~

939.48 (1m) (a) In this subsection: ✓

1. "Dwelling" has the meaning given in s. 895.07 (1) (h). ✓
2. "Place of business" means a business that the actor owns or operates. ✓

(end ins 4.3)