

2011 DRAFTING REQUEST

Senate Amendment (SA-AB69)

Received: 11/03/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Jon Erpenbach (608) 266-6670

By/Representing:

May Contact:

Drafter: phurley

Subject: Courts - immunity liability
Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Erpenbach@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Exception for firefighters and emergency medical technicians

Instructions:

See attached

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 11/03/2011	kfollett 11/03/2011	jfrantze 11/03/2011	_____	lparisi 11/03/2011	lparisi 11/03/2011	

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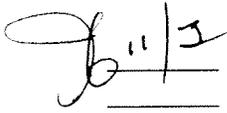
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**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 2011 ASSEMBLY BILL 69**

August 16, 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 and forcibly entering, or had already unlawfully and forcefully 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 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 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 and forcibly entering, or had already forcibly 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 and forcible 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 and forcible entry into a**
3 **dwelling, motor vehicle, or place of business; civil liability immunity. (1)**

4 In this section:

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

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

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

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

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

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

17 (3) If sub. (2) (a) or (b) applies, the finder of fact may not consider whether the
18 actor had an opportunity to flee or retreat before he or she used force and the actor
19 is presumed to have believed that the force was necessary to prevent imminent death
20 or bodily harm to himself or herself or to another person.

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

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

1 (b) The person against whom the force was used was a peace officer who entered
2 or attempted to enter the actor's dwelling, motor vehicle, or place of business in the
3 performance of his or her official duties. This paragraph applies only if at least one
4 of the following applies:

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

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

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

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

15 939.48 (1m) (a) In this subsection:

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

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

18 (ar) If an actor intentionally used force that was intended or likely to cause
19 death or great bodily harm, the court may not consider whether the actor had an
20 opportunity to flee or retreat before he or she used force and shall presume that the
21 actor reasonably believed that the force was necessary to prevent imminent death
22 or great bodily harm to himself or herself if the actor makes such a claim under sub.
23 (1) and either of the following applies:

24 1. The person against whom the force was used was in the process of unlawfully
25 and forcibly entering the actor's dwelling, motor vehicle, or place of business, the

1 actor was present in the dwelling, motor vehicle, or place of business, and the actor
2 knew or reasonably believed that an unlawful and forcible entry was occurring.

3 2. The person against whom the force was used was in the actor's dwelling,
4 motor vehicle, or place of business after unlawfully and forcibly entering it, the actor
5 was present in the dwelling, motor vehicle, or place of business, and the actor knew
6 or reasonably believed that the person had unlawfully and forcibly entered the
7 dwelling, motor vehicle, or place of business.

8 (b) The presumption described in par. (ar) does not apply if any of the following
9 applies:

10 1. The actor was engaged in a criminal activity or was using his or her dwelling,
11 motor vehicle, or place of business to further a criminal activity at the time.

12 2. The person against whom the force was used was a peace officer who entered
13 or attempted to enter the actor's dwelling, motor vehicle, or place of business in the
14 performance of his or her official duties. This subdivision applies only if at least one
15 of the following applies:

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

18 b. The actor knew or reasonably should have known that the person entering
19 or attempting to enter his or her dwelling, motor vehicle, or place of business was a
20 peace officer.

21 **SECTION 3. Initial applicability.**

22 (1) This act first applies to a use of force that occurs on the effective date of this
23 subsection.

24 (END)



**SENATE AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 2011 ASSEMBLY BILL 69**

*Bill as shown by
Assembly substitute
amendment 3,*

- 1 At the locations indicated, amend the ~~substitute amendment~~ as follows:
- 2 **1.** Page 4, line 1: delete “peace officer” and substitute “public safety worker,
3 as defined in s. 941.375 (1) (b),”.
- 4 **2.** Page 4, line 5: delete “officer” and substitute “public safety worker”.
- 5 **3.** Page 4, line 9: delete “peace officer” and substitute “public safety worker”.
- 6 **4.** Page 5, line 12: delete “peace officer” and substitute “public safety worker,
7 as defined in s. 941.375 (1) (b),”.
- 8 **5.** Page 5, line 16: delete “officer” and substitute “public safety worker”.
- 9 **6.** Page 5, line 20: delete “peace officer” and substitute “public safety worker”.