



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Assembly Bill 69

Senate Amendment 1

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This memorandum describes 2011 Assembly Bill 69, as passed by the Assembly on November 1, 2011, and Senate Amendment 1 to the bill.

2011 ASSEMBLY BILL 69

Presumption of Immunity for Criminal Liability

Under *current law*, a person is privileged to threaten or intentionally use force against another to prevent or terminate what the person reasonably believes to be an unlawful interference with his or her person by such other person. In addition, a person is generally privileged to defend a third person from unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend himself or herself from unlawful interference. The actor may intentionally use only such force or threat as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force that is intended or likely to cause death or great bodily harm unless the actor *reasonably believes that such force is necessary to prevent imminent death or great bodily harm* to himself or herself.

Assembly Bill 69 creates a presumption of immunity for criminal actions involving force that is intended or likely to cause death or great bodily harm. An actor is presumed to have *reasonably believed that the force was necessary to prevent imminent death or great bodily harm* to himself or herself if either of the following applies:

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

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

However, the presumption does not apply if: (a) the actor was engaged in criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time he or she used force; or (b) the person against whom the force was used was a peace officer who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties if the officer identified himself or herself to the actor before force was used by the actor or the actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a peace officer.

Further, the bill provides that a court may not consider whether the actor had an opportunity to flee or retreat before the actor used force.

Presumption of Immunity for Civil Liability

Current law does not contain a presumption of immunity in civil actions involving a claim of self-defense. However, existing common law defenses may bar recovery in some civil cases.

Assembly Bill 69 creates a presumption of immunity in civil actions involving force that is intended or likely to cause death or great bodily harm if an actor reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person and either item 1. or 2., below, applies. An actor is presumed to have reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person if either of the following applies:

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business; the actor was on his or her property or present in the dwelling, motor vehicle, or place of business; and the actor knew or had reason to believe that an unlawful and forcible entry was occurring.
2. The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it; the actor was present in the dwelling, motor vehicle, or place of business; and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

However, the presumption does not apply if: (a) the actor was engaged in criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time he or she used force; or (b) the person against whom the force was used was a peace officer who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties if the officer identified himself or herself to the actor before force was used by the actor or the actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a peace officer.

The bill also provides that if item 1. or 2., above, applies, the finder of fact may not consider whether the actor had an opportunity to flee or retreat before he or she used force.

Further, the bill provides that if a court finds that a person is immune from civil liability under the bill, the court must award the person reasonable attorney fees, costs, compensation for loss of income, and other costs of the litigation reasonably incurred by the person.

Lastly, the bill provides that the presumption of immunity for civil liability, created by the bill, may not be construed to limit or impair any defense to civil or criminal liability otherwise available.

SENATE AMENDMENT 1

Senate Amendment 1 modifies the exceptions in the bill that relate to entries by peace officers by providing that the exceptions apply to entries by public safety workers instead of peace officers. “Public safety worker” means an emergency medical technician, first responder, peace officer, fire fighter, or person operating or staffing an ambulance.

LEGISLATIVE HISTORY

Senate Amendment 1 was offered by Senator Erpenbach and others. On November 3, 2011, the Senate adopted the amendment on a voice vote, and concurred in Assembly Bill 69, as amended, on a vote of Ayes, 26; Noes, 7.

JKR:ksm