



2011 SENATE BILL 79

April 28, 2011 – Introduced by Senators WANGGAARD, LEIBHAM, HOLPERIN, LAZICH, COWLES, OLSEN, VUKMIR, GROTHMAN, HANSEN, GALLOWAY, DARLING, HARS DORF, HOPPER, TAYLOR, MOULTON, ZIPPERER, KAPANKE, LASEE, KEDZIE and SCHULTZ, cosponsored 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, THIESFELDT, VAN ROY, PRIDEMORE, BERNIER, JORGENSEN, ENDSLEY, PETERSEN, MEYER and BALLWEG. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

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

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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.

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.

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,

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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.

