

ASSEMBLY BILL 69 (LRB -0392)

An Act to create 895.62 and 939.48 (1m) of the statutes; relating to: the privilege of self-defense.

2011

03-30.	A.	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, Thiesfeldt, Van Roy and Ballweg ; cosponsored by Senators Wanggaard, Leibham, Holperin, Lazich, Cowles, Olsen, Vukmir, Grothman, Hansen, Galloway, Darling, Harsdorf, Hopper, Taylor, Moulton and Lasee .	
03-30.	A.	Read first time and referred to committee on Judiciary and Ethics	206
04-25.	A.	Representative Van Roy added as a coauthor	254
04-28.	A.	Representative Ballweg added as a coauthor	259
05-26.	A.	Public hearing held.	
06-03.	A.	Assembly amendment 1 offered by Representative Kaufert (LRB a0787)	362
06-03.	A.	Assembly amendment 2 offered by Representative Kaufert (LRB a0788)	362
06-07.	A.	Assembly substitute amendment 1 offered by Representative Kaufert (LRB s0136)	364
06-08.	A.	Assembly substitute amendment 2 offered by Representative Kaufert (LRB s0143)	367
07-25.	A.	Senator Lasee added as a cosponsor	461
08-02.	A.	Assembly amendment 1 to Assembly substitute amendment 2 offered by Representative Craig (LRB a1387)	467
08-15.	A.	Assembly amendment 1 to Assembly substitute amendment 1 offered by Representative Hebl (LRB a1445)	480
08-15.	A.	Assembly amendment 2 to Assembly substitute amendment 2 offered by Representative Hebl (LRB a1446)	480
08-16.	A.	Assembly substitute amendment 3 offered by Representative Kaufert (LRB s0165)	480
08-17.	A.	Assembly amendment 1 to Assembly substitute amendment 3 offered by Representatives Hebl and Staskunas (LRB a1460)	480
08-17.	A.	Representative Craig added as a coauthor	481
09-26.	A.	Assembly amendment 2 to Assembly substitute amendment 3 offered by Representative Kaufert (LRB a1521)	527
09-29.	A.	Executive action taken.	
10-12.	A.	Report Assembly Amendment 2 to Assembly Substitute Amendment 3 adoption recommended by committee on Judiciary and Ethics, Ayes 8, Noes 0	558
10-12.	A.	Report Assembly Substitute Amendment 3 adoption recommended by committee on Judiciary and Ethics, Ayes 6, Noes 2	559
10-12.	A.	Report passage as amended recommended by committee on Judiciary and Ethics, Ayes 6, Noes 2	559
10-12.	A.	Referred to committee on Rules	559
10-25.	A.	Made a special order of business at 11:01 A.M. on 11-1-2011	615
11-01.	A.	Read a second time	635
✓ 11-01.	A.	Assembly amendment 2 to Assembly substitute amendment 3 adopted	635
11-01.	A.	Assembly amendment 3 to Assembly substitute amendment 3 offered by Representatives Suder and August (LRB a1518)	636
✓ 11-01.	A.	Assembly amendment 3 to Assembly substitute amendment 3 adopted	636
11-01.	A.	Assembly amendment 4 to Assembly substitute amendment 3 offered by Representatives Young and E. Coggs (LRB a1912)	636
11-01.	A.	Assembly amendment 4 to Assembly substitute amendment 3 laid on table, Ayes 66, Noes 30	636
11-01.	A.	Assembly amendment 5 to Assembly substitute amendment 3 offered by Representatives C. Taylor, Pope-Roberts, Kessler, Pasch, Roys, Seidel, Clark, Ringhand, Zamarripa, Bewley and E. Coggs (LRB a1847)	636
11-01.	A.	Assembly amendment 5 to Assembly substitute amendment 3 laid on table, Ayes 67, Noes 29	636
✓ 11-01.	A.	Assembly substitute amendment 3 adopted	636
11-01.	A.	Representatives Murtha and Wynn added as coauthors	635
11-01.	A.	Ordered to a third reading	636
11-01.	A.	Rules suspended	636
11-01.	A.	Read a third time and passed , Ayes 71, Noes 24, Paired 2	636
11-01.	A.	Ordered immediately messaged	637
11-02.	S.	Received from Assembly.	
11-02.	S.	Read first time and referred to committee on Senate Organization.	
11-02.	S.	Available for scheduling.	
11-02.	S.	Placed on calendar 11-3-2011 pursuant to Senate Rule 18(1).	
11-03.	S.	Public hearing requirement waived by committee on Senate Organization, pursuant to Senate Rule 18 (1m), Ayes 3, Noes 2.	

- 11-03. S. Read a second time.
- 11-03. S. Senate amendment 1 offered by Senators Erpenbach, Hansen, Taylor, Miller, Risser, Carpenter, T. Cullen, King, C. Larson, Holperin and S. Coggs (**LRB a1967**).
- 11-03. S. Senate amendment 1 **adopted**.
- 11-03. S. Vote by which Senate amendment 1 was **adopted** reconsidered, Ayes 18, Noes 15.
- 11-03. S. Placed at the foot of the calendar of 11-3-2011.
- 11-03. S. Senate amendment 2 offered by Senator Risser (**LRB a1978**).
- ✓ 11-03. S. **Senate amendment 1 adopted**.
- 11-03. S. Senate amendment 2 laid on table, Ayes 19, Noes 14.
- 11-03. S. Ordered to a third reading.
- 11-03. S. Rules suspended.
- 11-03. S. Senator Kedzie added as a cosponsor.
- 11-03. S. Senator Vinehout added as a cosponsor.
- 11-03. S. Read a third time and **concurrent in** as amended, Ayes 26, Noes 7.
- 11-03. S. Ordered immediately messaged.
- 11-03. A. Received from Senate amended and concurrent in as amended (Senate amendment 1 adopted).
- ✓ 11-03. A. **Senate amendment 1 concurrent in**.
- 11-03. A. Action ordered immediately messaged.

MB

**2011
ENROLLED BILL**

11en AB-109 ✓

ADOPTED DOCUMENTS:

Orig Engr

A SubAmdt 3 ✓

11S 016517 ✓ ✓

Amendments to above (if none, write "NONE"): AA2 (a1521/1), AA3 (a1518/2) ✓ ✓ ✓

SA7 (a1967/1) ✓ ✓

Corrections - show date (if none, write "NONE"): None ✓ ✓ ✓

Topic Rel

11-4-11
Date

Jan F. Knepp
Enrolling Drafter



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0165/1
PJH:jld&wlj:ph

**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 ^{Ins AA2-1} 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 ^{Ins AA2-2} 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
or attempted to enter the actor's dwelling, motor vehicle, or place of business in the
performance of his or her official duties. This paragraph applies only if at least one
of the following applies:

Ins. SA1-1 ✓✓

5

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

Ins SA1-2 ✓✓

7

2. 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

9

peace officer

Ins SA1-3 ✓✓

10

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

✓✓

Ins AA3 →

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

24

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

25

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 ^{Ins SA1-4} 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 ^{Ins SA1-5} 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 ^{Ins. SA1-6}

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)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa1521/1
PJH:kjf:rs

ASSEMBLY AMENDMENT 2,
TO ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 2011 ASSEMBLY BILL 69

September 26, 2011 - Offered by Representative KAUFERT.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 2, line 5: after "likely" insert "to". ^{Ins. AA2-1}

3 2. Page 3, line 19: after "have" insert "reasonably". ^{Ins AA2-2}

4 (END)





State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa1518/2
PJH:kjf:jf

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

November 1, 2011 - Offered by Representatives SUDER and AUGUST.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 4, line 13: after that line insert:

Ins AA3

3 "(6) Nothing in this section may be construed to limit or impair any defense to
4 civil or criminal liability otherwise available."

✓✓

5 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa1967/1
PJH:kjf:jf

SENATE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 69

November 3, 2011 - Offered by Senators ERPENBACH, HANSEN, TAYLOR, MILLER,
RISSER, CARPENTER, T. CULLEN, KING, C. LARSON, HOLPERIN and S. COGGS.

1 At the locations indicated, amend the bill, as shown by assembly substitute
2 amendment 3, as follows:

3 1. Page 4, line 1: delete "peace officer" and substitute "public safety worker,
4 as defined in s. 941.375 (1) (b),". Ins SA1-1 ✓✓

5 2. Page 4, line 5: delete "officer" and substitute "public safety worker". Ins SA1-2 ✓✓

6 3. Page 4, line 9: delete "peace officer" and substitute "public safety worker". Ins SA1-3 ✓✓

7 4. Page 5, line 12: delete "peace officer" and substitute "public safety worker,
8 as defined in s. 941.375 (1) (b),". Ins SA1-4 ✓✓

9 5. Page 5, line 16: delete "officer" and substitute "public safety worker". Ins SA1-5 ✓✓

10 6. Page 5, line 20: delete "peace officer" and substitute "public safety worker". Ins SA1-6 ✓✓

11 (END)