

**2011 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA3-AB69)**

Received: **09/23/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **Luke**

May Contact:

Drafter: **phurley**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Suder@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>
/1	phurley 09/23/2011	kfollett 09/23/2011	jfrantze 09/23/2011	_____	ggodwin 09/23/2011	ggodwin 09/23/2011	
/2	phurley 10/27/2011	kfollett 10/27/2011	jfrantze 10/27/2011	_____	mbarman 10/27/2011	mbarman 10/27/2011	

FE Sent For:

<END>

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FE Sent For:

12/gf  
10/27  
Jb 10/27  
<END>

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/1	phurley	llkf 9/23	to	9/23			

FE Sent For:

<END>

## Hurley, Peggy

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**From:** Hanaman, Cathlene  
**Sent:** Thursday, September 22, 2011 5:14 PM  
**To:** Hurley, Peggy  
**Subject:** FW: Rush drafting request from Rep. Suder

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**From:** Hilgemann, Luke  
**Sent:** Thursday, September 22, 2011 5:13 PM  
**To:** Hanaman, Cathlene  
**Subject:** RE: Rush drafting request from Rep. Suder

Please have the amendment drafted to substitute amendment 3 offered by Rep. Kaufert. I should have asked for that in my first email.

Thank you!

### Luke Hilgemann

Chief of Staff  
Majority Leader Scott Suder's Office  
State Capitol Room 215 West  
(608)-267-0280

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**From:** Hanaman, Cathlene  
**Sent:** Thursday, September 22, 2011 5:10 PM  
**To:** Hilgemann, Luke  
**Subject:** RE: Rush drafting request from Rep. Suder

Thank you-- we will let you know if we have questions.

-Cathlene

---

**From:** Hilgemann, Luke  
**Sent:** Thursday, September 22, 2011 5:09 PM  
**To:** Hanaman, Cathlene  
**Subject:** Rush drafting request from Rep. Suder

Cathlene,

Rep. Suder would like to draft an amendment to Assembly bill 63, the Castle Doctrine. The bill is scheduled for an exec next Thursday in Judiciary so we need it ASAP.

Under section 895.62 add a new subsection (6) as follows: "(6) nothing in this section shall be construed to limit or impair any defense to civil or criminal liability otherwise available."

Also, at pg 5 lines 2 and 6, rather than "knew or reasonably believed" please replace those words with "knew or had reason to believe." This language is the same as pg 3 lines 10 and 15.

Thanks so much! Let me know if you have any questions.

Regards,

**Luke Hilgemann**

Chief of Staff

Majority Leader Scott Suder's Office

State Capitol Room 215 West

(608)-267-0280



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.

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***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.

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***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

See 1m

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)

*or had reason to believe*

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2015/lins.  
MPG:.....

1           INSERT 4-6

2           , or, beginning on January 1, 2011, by the department of commerce under ch.  
3 560, 2009, stats.,

4           END INSERT 4-6

5           INSERT 4-24

6           **(3)** Notwithstanding any other provision of this chapter and of chs. 71 and 76,  
7 the corporation may modify or waive a requirement of a certification or other  
8 authorization to claim a tax credit issued by the corporation or, beginning on January  
9 1, 2011, by the department of commerce under ch. 560, 2009, stats., if all of the  
10 following conditions are met:

11           (a) The person subject to the requirement applies to the corporation for a  
12 modification or waiver of that requirement under this subsection in the manner  
13 prescribed by the corporation.

14           (b) The corporation determines that the person intends to and may lawfully sell  
15 or otherwise transfer the tax credit under this section.

16           (c) The corporation determines that the requested modification or waiver under  
17 this subsection will not adversely affect economic development in this state.

18           **(4)** (a) If the corporation revokes a person's certification or other authorization  
19 to claim a tax credit issued by the corporation or, beginning on January 1, 2011, by  
20 the department of commerce under ch. 560, 2009, stats., and at the time of  
21 revocation, that person has transferred or otherwise sold that credit under this  
22 section, that person shall repay the credit amount to the corporation  
23 notwithstanding that transfer or sale.

1 (b) The corporation shall pay any amounts it receives under par. (a) to the  
2 secretary of administration for deposit in the general fund.

3 END INSERT 4-24

4 INSERT 6-14

5 (c) The corporation may adopt policies and procedures to implement this  
6 section, including additional eligibility requirements for certification.

7 **SECTION 1.** 238.302 (2) and (3) of the statutes, as affected by 2011 Wisconsin  
8 Act 32, are amended to read:

9 238.302 (2) CAPITAL INVESTMENT PROJECT. A project that involves a significant  
10 investment of capital, as defined by the corporation ~~by rule~~ under s. 238.306 (2) (b),  
11 by the person in new equipment, machinery, real property, or depreciable personal  
12 property.

13 (3) EMPLOYEE TRAINING PROJECT. A project that involves significant investments  
14 in the training or reeducation of employees, as defined by the corporation ~~by rule~~  
15 under s. 238.306 (2) (c), by the person for the purpose of improving the productivity  
16 or competitiveness of the business of the person.

17 History: 2009 a. 2; 2011 a. 32 s. 3411; Stats. 2011 s. 238.302.

17 END INSERT 6-14

18 INSERT 10-2

19 (2) (title) RULES POLICIES AND PROCEDURES. (intro.) Establish by ~~rule~~ policies  
20 and procedures all of the following:

21 END INSERT 10-2



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

*today  
9-23-11*

- 1 At the locations indicated, amend the substitute amendment as follows: ✓
- 2 **1.** Page 4, line 13: after that line insert: ✓
- 3 “(6) Nothing in this section may be construed to limit or impair any defense to ✓
- 4 civil or criminal liability otherwise available.”
- 5 **2.** Page 5, line 2: delete “reasonably believed” and substitute “had reason to ✓
- 6 believe”.
- 7 **3.** Page 5, line 10: delete “reasonably believed” and substitute “had reason to ✓ *6*
- 8 believe”.

9 (END)

**Hurley, Peggy**

---

**From:** Fladeboe, David  
**Sent:** Thursday, October 27, 2011 9:34 AM  
**To:** Hurley, Peggy  
**Subject:** Amendment to AB 69

Peggy,

We would like to make a change to LRB a1518/1, an Assembly Amendment to ASA 3 to AB 69. It would simply remove sections 2 and 3 (lines 5-9) of the amendment. We already got the stripes for the amendment but never introduced them so I'm not sure if we need a whole new amendment or if we can just get a /2. Let me know if you have any questions.

Thank you.

**David Fladeboe**  
Office of Majority Leader  
Rep. Scott Suder  
608-266-2401  
608-267-0280  
888-534-0069



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa1518/1  
PJH:kjf:jf

2  
RMR

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

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6 believe”.

7 **3.** Page 5, line 6: delete “reasonably believed” and substitute “had reason to  
8 believe”.

9 (END)