

By: Wentworth

S.B. No. 378

A BILL TO BE ENTITLED

AN ACT

relating to the use of force or deadly force in defense of a person.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 9.01, Penal Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "Habitation" has the meaning assigned by Section 30.01.

(5) "Vehicle" has the meaning assigned by Section 30.01.

SECTION 2. Section 9.31, Penal Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor [he] reasonably believes the force is immediately necessary to protect the actor [himself] against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor knew or had reason to believe that the person against whom the force was used:

(1) unlawfully entered, or was attempting to enter unlawfully, the actor's habitation, vehicle, or place of business or employment;

(2) unlawfully removed, or was attempting to remove

1 unlawfully, the actor from the actor's habitation, vehicle, or
2 place of business or employment; or

3 (3) was committing or attempting to commit aggravated
4 kidnapping, murder, sexual assault, aggravated sexual assault,
5 robbery, or aggravated robbery.

6 (e) A person who has a right to be present at the location
7 where the force is used, who has not provoked the person against
8 whom the force is used, and who is not engaged in criminal activity
9 at the time the force is used is not required to retreat before
10 using force as described by this section.

11 (f) For purposes of Subsection (a), in determining whether
12 an actor described by Subsection (e) reasonably believed that the
13 use of force was necessary, a finder of fact may not consider
14 whether the actor failed to retreat.

15 SECTION 3. Section 9.32, Penal Code, is amended to read as
16 follows:

17 Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person
18 is justified in using deadly force against another:

19 (1) if the actor [~~he~~] would be justified in using force
20 against the other under Section 9.31; and

21 ~~(2) [if a reasonable person in the actor's situation~~
22 ~~would not have retreated, and~~

23 [~~(3)~~] when and to the degree the actor [~~he~~] reasonably
24 believes the deadly force is immediately necessary:

25 (A) to protect the actor [~~himself~~] against the
26 other's use or attempted use of unlawful deadly force; or

27 (B) to prevent the other's imminent commission of

1 aggravated kidnapping, murder, sexual assault, aggravated sexual
2 assault, robbery, or aggravated robbery.

3 (b) The actor's belief under Subsection (a)(2) that the
4 deadly force was immediately necessary as described by that
5 subdivision is presumed to be reasonable if the actor knew or had
6 reason to believe that the person against whom the deadly force was
7 used:

8 (1) unlawfully entered, or was attempting to enter
9 unlawfully, the actor's habitation, vehicle, or place of business
10 or employment;

11 (2) unlawfully removed, or was attempting to remove
12 unlawfully, the actor from the actor's habitation, vehicle, or
13 place of business or employment of the actor; or

14 (3) was committing or attempting to commit an offense
15 described by Subsection (a)(2)(B) [~~The requirement imposed by~~
16 ~~Subsection (a)(2) does not apply to an actor who uses force against~~
17 ~~a person who is at the time of the use of force committing an offense~~
18 ~~of unlawful entry in the habitation of the actor].~~

19 (c) A person who has a right to be present at the location
20 where the deadly force is used, who has not provoked the person
21 against whom the deadly force is used, and who is not engaged in
22 criminal activity at the time the deadly force is used is not
23 required to retreat before using deadly force as described by this
24 section.

25 (d) For purposes of Subsection (a)(2), in determining
26 whether an actor described by Subsection (c) reasonably believed
27 that the use of deadly force was necessary, a finder of fact may not

1 consider whether the actor failed to retreat.

2 SECTION 4. Section 83.001, Civil Practice and Remedies
3 Code, is amended to read as follows:

4 Sec. 83.001. AFFIRMATIVE DEFENSE. It is an affirmative
5 defense to a civil action for damages for personal injury or death
6 that the defendant, at the time the cause of action arose, was
7 justified in using force or deadly force under Subchapter C,
8 Chapter 9 [~~Section 9.32~~], Penal Code [~~, against a person who at the~~
9 ~~time of the use of force was committing an offense of unlawful entry~~
10 ~~in the habitation of the defendant~~].

11 SECTION 5. Chapter 83, Civil Practice and Remedies Code, is
12 amended by adding Section 83.002 to read as follows:

13 Sec. 83.002. COURT COSTS, ATTORNEY'S FEES, AND OTHER
14 EXPENSES. A defendant who prevails in asserting the affirmative
15 defense described by Section 83.001 may recover from the plaintiff
16 all court costs, reasonable attorney's fees, earned income that was
17 lost as a result of the suit, and other reasonable expenses.

18 SECTION 6. (a) Sections 9.31 and 9.32, Penal Code, as
19 amended by this Act, apply only to an offense committed on or after
20 the effective date of this Act. An offense committed before the
21 effective date of this Act is covered by the law in effect when the
22 offense was committed, and the former law is continued in effect for
23 this purpose. For the purposes of this subsection, an offense is
24 committed before the effective date of this Act if any element of
25 the offense occurs before the effective date.

26 (b) Section 83.001, Civil Practice and Remedies Code, as
27 amended by this Act, and Section 83.002, Civil Practice and

1 Remedies Code, as added by this Act, apply only to a cause of action
2 that accrues on or after the effective date of this Act. An action
3 that accrued before the effective date of this Act is governed by
4 the law in effect at the time the action accrued, and that law is
5 continued in effect for that purpose.

6 SECTION 7. This Act takes effect September 1, 2007.