

ASSEMBLY BILL NO. 381—ASSEMBLYMAN SEGERBLOM

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the use of force in defense of habitation, property or person. (BDR 15-123)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the use of force; revising the provisions governing justifiable homicide; revising the provisions governing civil liability in actions involving the use of force; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing case law, there is no duty to retreat before using deadly force if the person using deadly force is not the original aggressor and reasonably believes that he or she is about to be killed or seriously injured. (*Culverson v. State*, 106 Nev. 484 (1990)) **Section 1** of this bill provides that under the defense of justifiable homicide there is no duty to retreat if the person using deadly force: (1) is not the original aggressor; (2) has a reasonable belief that he or she is in danger of being killed or seriously injured by the person against whom deadly force is used; (3) has a right to be present at the location where deadly force is used; and (4) is not engaged in criminal activity at the time deadly force is used. **Section 1** also revises the definition of “justifiable homicide” to include specifically the killing of a person in defense of property where a person is present, including, without limitation, a motor vehicle or place of business or employment.

Existing law provides that a killing is justifiable if the circumstances were sufficient to excite the fears of a reasonable person and the person killing really acted under the influence of those fears and not in a spirit of revenge. (NRS 200.130) **Section 2** of this bill establishes a presumption that the killing is justifiable under the standard set forth in NRS 200.130 if the person killing: (1) knew or had reason to believe that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the habitation or property of another; (2) knew or had reason to believe that the person who was killed was committing or attempting to commit a felony; and (3) did not provoke the person who was killed.



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Existing law provides that in a civil action brought by or on behalf of a person against whom force which is intended or likely to cause death or bodily injury was used: (1) there is a presumption that the person who used such force had a reasonable fear of imminent death or bodily injury to himself or herself or another person if the person against whom such force was used was committing burglary or invasion of the home; and (2) that presumption must be overcome by clear and convincing evidence to the contrary for the civil action to be maintained. (NRS 41.095) **Section 3** of this bill removes that presumption and enacts a provision, based upon Texas law, which provides that a person is immune from civil liability for using force which is intended or likely to cause death or bodily injury if the person was justified in using such force under the applicable provisions of Nevada criminal law. (Texas Civil Practice and Remedies Code, § 83.001)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 200.120 is hereby amended to read as follows:

200.120 **1.** Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property *where a person is present, including, without limitation, a motor vehicle or place of business or employment*, or person, against one who manifestly intends ~~to~~ or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the habitation *or property where a person is present, including, without limitation, a motor vehicle or place of business or employment*, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

2. *A person is not required to retreat before using deadly force as provided in subsection 1 if the person:*

(a) Is not the original aggressor;

(b) Has a reasonable belief that he or she is in danger of being killed or seriously injured by the person against whom deadly force is used;

(c) Has a right to be present at the location where deadly force is used; and

(d) Is not engaged in criminal activity at the time deadly force is used.

3. *As used in this section, "motor vehicle" means every vehicle which is self-propelled.*

Sec. 2. NRS 200.130 is hereby amended to read as follows:

200.130 **1.** A bare fear of any of the offenses mentioned in NRS 200.120, to prevent which the homicide is alleged to have been committed, ~~is not~~ *is not* sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the



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fears of a reasonable person ~~[-]~~ and that the ~~[-party]~~ **person** killing really acted under the influence of those fears and not in a spirit of revenge.

2. It is presumed that the circumstances were sufficient to excite the fears of a reasonable person and that the person killing really acted under the influence of those fears and not in a spirit of revenge if the person killing:

(a) Knew or had reason to believe that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the habitation or property, including, without limitation, a motor vehicle or place of business or employment, of another;

(b) Knew or had reason to believe that the person who was killed was committing or attempting to commit a felony; and

(c) Did not provoke the person who was killed.

3. As used in this section, "motor vehicle" means every vehicle which is self-propelled.

Sec. 3. NRS 41.095 is hereby amended to read as follows:

41.095 1. For the purposes of NRS 41.085 and 41.130, any person who uses, while lawfully in his or her residence , ~~[-or]~~ in transient lodging, ***in a place of business or employment or in a motor vehicle that is not his or her residence,*** force which is intended or likely to cause death or bodily injury is ~~[-presumed to have had a reasonable fear of imminent death or bodily injury to himself or herself or another person lawfully in the residence or transient lodging if the force is used against a person who is committing burglary or invasion of the home and the person using the force knew or had reason to believe that burglary or invasion of the home was being committed. An]~~ ***immune from civil liability in an*** action to recover damages for personal injuries to or the wrongful death of the person ~~[-who committed burglary or invasion of the home may not be maintained against the person who used such force unless the presumption is overcome by clear and convincing evidence to the contrary.]~~ ***against whom such force was used if the use of such force was justified under the applicable provisions of chapter 200 of NRS relating to the use of such force.***

2. As used in this section ~~[-~~ ***"residence"*** ~~]~~:

(a) "Motor vehicle" means every vehicle which is self-propelled.

(b) "Residence" means any house, room, apartment, tenement or other building, vehicle, vehicle trailer, semitrailer, house trailer or boat designed or intended for occupancy as a residence.

