

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 273 Session of 2011

INTRODUCED BY ALLOWAY, WOZNIAK, ROBBINS, FONTANA, EICHELBERGER, ORIE, FOLMER, PILEGGI, BREWSTER, SMUCKER, SOLOBAY, RAFFERTY, YAW, VOGEL, SCARNATI, BOSCOLA, STACK, PIPPY, MENSCH, TOMLINSON, BROWNE, WARD, YUDICHAK, D. WHITE, KASUNIC, GORDNER, PICCOLA, BAKER, BRUBAKER, WAUGH, McILHINNEY AND ARGALL, JANUARY 26, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 5, 2012

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in general principles of justification, further ←
4 providing for definitions, for use of force in self-
5 protection, for use of force for the protection of other ←
6 persons, for grading of theft offenses and for licenses to
7 carry firearms; and providing for civil immunity for use of
8 force. IN FIREARMS AND OTHER DANGEROUS ARTICLES, FURTHER ←
9 PROVIDING FOR DEFINITIONS AND FOR SALE OR TRANSFER OF
10 FIREARMS; AND, IN PARTICULAR RIGHTS AND IMMUNITIES, FURTHER
11 PROVIDING FOR CIVIL IMMUNITY FOR USE OF FORCE AND PROVIDING
12 FOR DECLARATIVE AND INJUNCTIVE RELIEF AND CERTAIN DAMAGES.

13 The General Assembly finds that:

14 (1) It is proper for law-abiding people to protect
15 themselves, their families and others from intruders and
16 attackers without fear of prosecution or civil action for
17 acting in defense of themselves and others.

18 (2) The Castle Doctrine is a common law doctrine of ←
19 ancient origins which declares that a home is a person's-
20 castle.

1           ~~(3)~~ (2) Section 21 of Article I of the Constitution of ←  
2           Pennsylvania guarantees that the "right of the citizens to  
3           bear arms in defense of themselves and the State shall not be  
4           questioned."

5           ~~(4) Persons residing in or visiting this Commonwealth~~ ←  
6           ~~have a right to expect to remain unmolested within their~~  
7           ~~homes or vehicles.~~

8           ~~(5) No person should be required to surrender his or her~~  
9           ~~personal safety to a criminal, nor should a person be~~  
10          ~~required to needlessly retreat in the face of intrusion or~~  
11          ~~attack outside the person's home or vehicle.~~

12          (3) COMMONWEALTH LAW CURRENTLY LIMITS REGULATION OF ←  
13          FIREARMS, AMMUNITION AND AMMUNITION COMPONENTS BY POLITICAL  
14          SUBDIVISIONS IN ORDER TO FURTHER THE RIGHT GUARANTEED BY  
15          SECTION 21 OF ARTICLE I OF THE CONSTITUTION OF PENNSYLVANIA.

16          (4) UNLAWFUL REGULATION OF FIREARMS, AMMUNITION AND  
17          AMMUNITION COMPONENTS BY POLITICAL SUBDIVISIONS AND THE  
18          THREAT OF CITATION, PROSECUTION OR OTHER LEGAL PROCESS POSED  
19          BY SUCH REGULATION INTERFERE WITH THIS RIGHT.

20          (5) SUCH INTERFERENCE WITH THE RIGHT GUARANTEED BY  
21          SECTION 21 OF ARTICLE I OF THE CONSTITUTION OF PENNSYLVANIA  
22          UNDULY INHIBITS LAW-ABIDING PEOPLE FROM PROTECTING  
23          THEMSELVES, THEIR FAMILIES AND OTHERS FROM INTRUDERS AND  
24          ATTACKERS AND FROM OTHER LEGITIMATE USES OF CONSTITUTIONALLY  
25          PROTECTED ARMS, INCLUDING HUNTING AND SPORTING ACTIVITIES.

26          The General Assembly of the Commonwealth of Pennsylvania  
27          hereby enacts as follows:

28          ~~Section 1. Section 501 of Title 18 of the Pennsylvania~~ ←  
29          ~~Consolidated Statutes is amended to read:~~

30          ~~§ 501. Definitions.~~

1       ~~Subject to additional definitions contained in subsequent~~  
2 ~~provisions of this chapter which are applicable to specific~~  
3 ~~provisions of this chapter, the following words and phrases,~~  
4 ~~when used in this chapter shall have, unless the context clearly~~  
5 ~~indicates otherwise, the meanings given to them in this section:~~

6       ~~"Believes" or "belief." Means "reasonably believes" or~~  
7 ~~"reasonable belief."~~

8       ~~"Correctional institution." Any penal institution,~~  
9 ~~penitentiary, State farm, reformatory, prison, jail, house of~~  
10 ~~correction, or other institution for the incarceration or~~  
11 ~~custody of persons under sentence for offenses or awaiting trial~~  
12 ~~or sentence for offenses.~~

13       ~~"Corrections officer." A full time employee assigned to the~~  
14 ~~Department of Corrections whose principal duty is the care,~~  
15 ~~custody and control of inmates of a penal or correctional~~  
16 ~~institution operated by the Department of Corrections.~~

17       ~~"Deadly force." Force which, under the circumstances in~~  
18 ~~which it is used, is readily capable of causing death or serious~~  
19 ~~bodily injury.~~

20       ~~"Dwelling." Any building or structure, including any~~  
21 ~~attached porch, deck or patio, though movable or temporary, or a~~  
22 ~~portion thereof, which is for the time being the home or place~~  
23 ~~of lodging of the actor.~~

24       ~~"Peace officer." Any person who by virtue of his office or~~  
25 ~~public employment is vested by law with a duty to maintain~~  
26 ~~public order or to make arrests for offenses, whether that duty~~  
27 ~~extends to all offenses or is limited to specific offenses, or~~  
28 ~~any person on active State duty pursuant to [section 311 of the~~  
29 ~~act of May 27, 1949 (P.L.1903, No.568), known as "The Military~~  
30 ~~Code of 1949." ] 51 Pa.C.S. § 508 (relating to active duty for~~

1 ~~emergency). The term "peace officer" shall also include any~~  
2 ~~member of any park police department of any county of the third~~  
3 ~~class.~~

4 ~~"Residence." A dwelling in which a person resides, either~~  
5 ~~temporarily or permanently, or visits as an invited guest.~~

6 ~~"Unlawful force." Force, including confinement, which is~~  
7 ~~employed without the consent of the person against whom it is~~  
8 ~~directed and the employment of which constitutes an offense or~~  
9 ~~actionable tort or would constitute such offense or tort except~~  
10 ~~for a defense (such as the absence of intent, negligence, or~~  
11 ~~mental capacity; duress; youth; or diplomatic status) not~~  
12 ~~amounting to a privilege to use the force. Assent constitutes~~  
13 ~~consent, within the meaning of this section, whether or not it~~  
14 ~~otherwise is legally effective, except assent to the infliction~~  
15 ~~of death or serious bodily injury.~~

16 ~~"Vehicle." A conveyance of any kind, whether or not~~  
17 ~~motorized, which is designed to transport people or property.~~

18 ~~Section 2. Section 505(b) of Title 18 is amended and the~~  
19 ~~section is amended by adding a subsection to read:~~

20 ~~§ 505. Use of force in self protection.~~

21 ~~\* \* \*~~

22 ~~(b) Limitations on justifying necessity for use of force.~~

23 ~~(1) The use of force is not justifiable under this~~  
24 ~~section:~~

25 ~~(i) to resist an arrest which the actor knows is~~  
26 ~~being made by a peace officer, although the arrest is~~  
27 ~~unlawful; or~~

28 ~~(ii) to resist force used by the occupier or~~  
29 ~~possessor of property or by another person on his behalf,~~  
30 ~~where the actor knows that the person using the force is~~

1 ~~doing so under a claim of right to protect the property,~~  
2 ~~except that this limitation shall not apply if:~~

3 ~~(A) the actor is a public officer acting in the~~  
4 ~~performance of his duties or a person lawfully~~  
5 ~~assisting him therein or a person making or assisting~~  
6 ~~in a lawful arrest;~~

7 ~~(B) the actor has been unlawfully dispossessed~~  
8 ~~of the property and is making a reentry or recaption~~  
9 ~~justified by section 507 of this title (relating to~~  
10 ~~use of force for the protection of property); or~~

11 ~~(C) the actor believes that such force is~~  
12 ~~necessary to protect himself against death or serious~~  
13 ~~bodily injury.~~

14 ~~(2) The use of deadly force is not justifiable under~~  
15 ~~this section unless the actor believes that such force is~~  
16 ~~necessary to protect himself against death, serious bodily~~  
17 ~~injury, kidnapping or sexual intercourse compelled by force~~  
18 ~~or threat; nor is it justifiable if:~~

19 ~~(i) the actor, with the intent of causing death or~~  
20 ~~serious bodily injury, provoked the use of force against~~  
21 ~~himself in the same encounter; or~~

22 ~~(ii) the actor knows that he can avoid the necessity~~  
23 ~~of using such force with complete safety by retreating~~  
24 ~~[or by surrendering possession of a thing to a person~~  
25 ~~asserting a claim of right thereto or by complying with a~~  
26 ~~demand that he abstain from any action which he has no~~  
27 ~~duty to take], except [that:~~

28 ~~(A)] the actor is not obliged to retreat from~~  
29 ~~his dwelling or place of work, unless he was the~~  
30 ~~initial aggressor or is assailed in his place of work~~

1 by another person whose place of work the actor knows  
2 it to be[; and

3 (B) a public officer justified in using force in  
4 the performance of his duties or a person justified  
5 in using force in his assistance or a person  
6 justified in using force in making an arrest or  
7 preventing an escape is not obliged to desist from  
8 efforts to perform such duty, effect such arrest or  
9 prevent such escape because of resistance or  
10 threatened resistance by or on behalf of the person  
11 against whom such action is directed].

12 ~~(2.1) Except as otherwise provided in paragraph (2.2),~~  
13 ~~an actor is presumed to have a reasonable belief that deadly~~  
14 ~~force is immediately necessary to protect himself against~~  
15 ~~death, serious bodily injury, kidnapping or sexual~~  
16 ~~intercourse compelled by force or threat if both of the~~  
17 ~~following conditions exist:~~

18 ~~(i) The person against whom the force is used is in~~  
19 ~~the process of unlawfully and forcefully entering, or has~~  
20 ~~unlawfully and forcefully entered and is present within,~~  
21 ~~a dwelling, residence or occupied vehicle; or the person~~  
22 ~~against whom the force is used is or is attempting to~~  
23 ~~unlawfully and forcefully remove another against that~~  
24 ~~other's will from the dwelling, residence or occupied~~  
25 ~~vehicle.~~

26 ~~(ii) The actor knows or has reason to believe that~~  
27 ~~the unlawful and forceful entry or act is occurring or~~  
28 ~~has occurred.~~

29 ~~(2.2) The presumption set forth in paragraph (2.1) does~~  
30 ~~not apply if:~~

1           ~~(i) the person against whom the force is used has~~  
2 ~~the right to be in or is a lawful resident of the~~  
3 ~~dwelling, residence or vehicle, such as an owner or~~  
4 ~~lessee;~~

5           ~~(ii) the person sought to be removed is a child or~~  
6 ~~grandchild or is otherwise in the lawful custody or under~~  
7 ~~the lawful guardianship of the person against whom the~~  
8 ~~protective force is used;~~

9           ~~(iii) the actor is engaged in a criminal activity or~~  
10 ~~is using the dwelling, residence or occupied vehicle to~~  
11 ~~further a criminal activity; or~~

12           ~~(iv) the person against whom the force is used is a~~  
13 ~~peace officer acting in the performance of his official~~  
14 ~~duties and the actor using force knew or reasonably~~  
15 ~~should have known that the person was a peace officer.~~

16           ~~(2.3) An actor who is not engaged in a criminal~~  
17 ~~activity, who is not in illegal possession of a firearm and~~  
18 ~~who is attacked in any place where the actor would have a~~  
19 ~~duty to retreat under paragraph (2) (ii), has no duty to~~  
20 ~~retreat and has the right to stand his ground and use force,~~  
21 ~~including deadly force, if:~~

22           ~~(i) the actor has a right to be in the place where~~  
23 ~~he was attacked;~~

24           ~~(ii) the actor believes it is immediately necessary~~  
25 ~~to do so to protect himself against death, serious bodily~~  
26 ~~injury, kidnapping or sexual intercourse by force or~~  
27 ~~threat; and~~

28           ~~(iii) the person against whom the force is used~~  
29 ~~displays or otherwise uses:~~

30           ~~(A) a firearm or replica of a firearm as defined~~

1 ~~in 42 Pa.C.S. § 9712 (relating to sentences for~~  
2 ~~offenses committed with firearms); or~~

3 ~~(B) any other weapon readily or apparently~~  
4 ~~capable of lethal use.~~

5 ~~(2.4) The exception to the duty to retreat set forth~~  
6 ~~under paragraph (2.3) does not apply if the person against~~  
7 ~~whom the force is used is a peace officer acting in the~~  
8 ~~performance of his official duties and the actor using force~~  
9 ~~knew or reasonably should have known that the person was a~~  
10 ~~peace officer.~~

11 ~~(2.5) Unless one of the exceptions under paragraph (2.2)~~  
12 ~~applies, a person who unlawfully and by force enters or~~  
13 ~~attempts to enter an actor's dwelling, residence or occupied~~  
14 ~~vehicle or removes or attempts to remove another against that~~  
15 ~~other's will from the actor's dwelling, residence or occupied~~  
16 ~~vehicle is presumed to be doing so with the intent to commit:~~

17 ~~(i) an act resulting in death or serious bodily~~  
18 ~~injury; or~~

19 ~~(ii) kidnapping or sexual intercourse by force or~~  
20 ~~threat.~~

21 ~~(2.6) A public officer justified in using force in the~~  
22 ~~performance of his duties or a person justified in using~~  
23 ~~force in his assistance or a person justified in using force~~  
24 ~~in making an arrest or preventing an escape is not obliged to~~  
25 ~~desist from efforts to perform such duty, effect such arrest~~  
26 ~~or prevent such escape because of resistance or threatened~~  
27 ~~resistance by or on behalf of the person against whom such~~  
28 ~~action is directed.~~

29 ~~(3) Except as [required by paragraphs (1) and (2) of~~  
30 ~~this subsection,] otherwise required by this subsection, a~~



1 ~~person employing protective force may estimate the necessity~~  
2 ~~thereof under the circumstances as he believes them to be~~  
3 ~~when the force is used, without retreating, surrendering~~  
4 ~~possession, doing any other act which he has no legal duty to~~  
5 ~~do or abstaining from any lawful action.~~

6 \* \* \*

7 ~~(d) Definition. As used in this section, the term "criminal~~  
8 ~~activity" means conduct which is a misdemeanor or felony, is not~~  
9 ~~justifiable under this chapter and is related to the~~  
10 ~~confrontation between an actor and the person against whom force~~  
11 ~~is used.~~

12 ~~Section 3. Section 506 of Title 18 is amended to read:~~

13 ~~§ 506. Use of force for the protection of other persons.~~

14 ~~(a) General rule. The use of force upon or toward the~~  
15 ~~person of another is justifiable to protect a third person when:~~

16 ~~(1) the actor would be justified under section 505 [of~~  
17 ~~this title] (relating to use of force in self protection) in~~  
18 ~~using such force to protect himself against the injury he~~  
19 ~~believes to be threatened to the person whom he seeks to~~  
20 ~~protect;~~

21 ~~(2) under the circumstances as the actor believes them~~  
22 ~~to be, the person whom he seeks to protect would be justified~~  
23 ~~in using such protective force; and~~

24 ~~(3) the actor believes that his intervention is~~  
25 ~~necessary for the protection of such other person.~~

26 ~~(b) [Exceptions] Exception. Notwithstanding subsection (a)~~  
27 ~~[of this section:~~

28 ~~(1) When the actor would be obliged under section 505 of~~  
29 ~~this title to retreat, to surrender the possession of a thing~~  
30 ~~or to comply with a demand before using force in self-~~

1 ~~protection, he is not obliged to do so before using force for~~  
2 ~~the protection of another person, unless he knows that he can~~  
3 ~~thereby secure the complete safety of such other person.~~

4 ~~(2) When the person whom the actor seeks to protect~~  
5 ~~would be obliged under section 505 of this title to retreat,~~  
6 ~~to surrender the possession of a thing or to comply with a~~  
7 ~~demand if he knew that he could obtain complete safety by so~~  
8 ~~doing, the actor is obliged to try to cause him to do so~~  
9 ~~before using force in his protection if the actor knows that~~  
10 ~~he can obtain complete safety in that way.~~

11 ~~(3) Neither the actor nor the person whom he seeks to~~  
12 ~~protect is obliged to retreat when in the dwelling or place~~  
13 ~~of work of the other to any greater extent than in his own. ]~~  
14 ~~the actor is not obliged to retreat to any greater extent~~  
15 ~~than the person whom he seeks to protect.~~

16 Section 4. Section 3903(a), (a.1) and (b) of Title 18 are  
17 amended and the section is amended by adding a subsection to  
18 read:

19 ~~§ 3903. Grading of theft offenses.~~

20 ~~(a) Felony of the second degree. Theft constitutes a felony~~  
21 ~~of the second degree if:~~

22 ~~(1) The offense is committed during a manmade disaster,~~  
23 ~~a natural disaster or a war caused disaster and constitutes a~~  
24 ~~violation of section 3921 (relating to theft by unlawful~~  
25 ~~taking or disposition), 3925 (relating to receiving stolen~~  
26 ~~property), 3928 (relating to unauthorized use of automobiles~~  
27 ~~and other vehicles) or 3929 (relating to retail theft).~~

28 ~~(2) The property stolen is a firearm.~~

29 ~~(3) In the case of theft by receiving stolen property,~~  
30 ~~the property received, retained or disposed of is a firearm~~

1 ~~{and the receiver is in the business of buying or selling~~  
2 ~~stolen property}.~~

3 ~~(4) The property stolen is any amount of anhydrous~~  
4 ~~ammonia.~~

5 ~~(a.1) Felony of the third degree. Except as provided in~~  
6 ~~subsection (a) or (a.2), theft constitutes a felony of the third~~  
7 ~~degree if the amount involved exceeds \$2,000, or if the property~~  
8 ~~stolen is an automobile, airplane, motorcycle, motorboat or~~  
9 ~~other motor propelled vehicle, or in the case of theft by~~  
10 ~~receiving stolen property, if the receiver is in the business of~~  
11 ~~buying or selling stolen property.~~

12 ~~(a.2) Felony of the first degree. Theft constitutes a~~  
13 ~~felony of the first degree if, in the case of theft by receiving~~  
14 ~~stolen property, the property received, retained or disposed of~~  
15 ~~is a firearm and the receiver is in the business of buying or~~  
16 ~~selling stolen property.~~

17 ~~(b) Other grades. Theft not within subsection (a) [or],~~  
18 ~~(a.1) [of this section] or (a.2), constitutes a misdemeanor of~~  
19 ~~the first degree, except that if the property was not taken from~~  
20 ~~the person or by threat, or in breach of fiduciary obligation,~~  
21 ~~and:~~

22 ~~(1) the amount involved was \$50 or more but less than~~  
23 ~~\$200 the offense constitutes a misdemeanor of the second~~  
24 ~~degree; or~~

25 ~~(2) the amount involved was less than \$50 the offense~~  
26 ~~constitutes a misdemeanor of the third degree.~~

27 ~~\* \* \*~~

28 ~~Section 5. The definition of "loaded" in section 6102 of~~  
29 ~~Title 18 is amended to read:~~

30 SECTION 1. SECTION 6102 OF TITLE 18 OF THE PENNSYLVANIA



1 CONSOLIDATED STATUTES IS AMENDED BY ADDING A DEFINITION TO READ:

2 § 6102. Definitions.

3 Subject to additional definitions contained in subsequent  
4 provisions of this subchapter which are applicable to specific  
5 provisions of this subchapter, the following words and phrases,  
6 when used in this subchapter shall have, unless the context  
7 clearly indicates otherwise, the meanings given to them in this  
8 section:

9 \* \* \*



10 ~~"Loaded." A firearm is loaded if the firing chamber, the~~  
11 ~~nondetachable magazine or, in the case of a revolver, any of the~~  
12 ~~chambers of the cylinder contain ammunition capable of being~~  
13 ~~fired. In the case of a firearm which utilizes a detachable~~  
14 ~~magazine, the term shall mean a magazine suitable for use in~~  
15 ~~said firearm which magazine contains such ammunition and has~~  
16 ~~been inserted in the firearm or is in the same container or,~~  
17 ~~where the container has multiple compartments, the same~~  
18 ~~compartment thereof as the firearm. If the magazine is inserted~~  
19 ~~into a pouch, holder, holster or other protective device that~~  
20 ~~provides for a complete and secure enclosure of the ammunition,~~  
21 ~~then the pouch, holder, holster or other protective device shall~~  
22 ~~be deemed to be a separate compartment.~~

23 "AMMUNITION COMPONENTS."



24 (1) THE INDIVIDUAL COMPONENTS OF A FIXED CARTRIDGE OR  
25 SHOTGUN SHELL, INCLUDING, BUT NOT LIMITED TO, CASINGS,  
26 PRIMERS AND PROJECTILES.

27 (2) A PROPELLANT USED IN AMMUNITION.

28 (3) A PROJECTILE OR PROPELLANT USED IN ANTIQUE FIREARMS  
29 AS DEFINED IN SECTION 6118 (RELATING TO ANTIQUE FIREARMS).

30 \* \* \*



1 Section 6. ~~Section 6109(m.3) of Title 18 is amended to read:~~

2 ~~§ 6109. Licenses.~~

3 \* \* \*

4 ~~(m.3) Construction. Nothing in this section shall be~~  
5 ~~construed to [permit].~~

6 ~~(1) Permit the hunting or harvesting of any wildlife~~  
7 ~~with a firearm or ammunition not otherwise permitted by 34~~  
8 ~~Pa.C.S. (relating to game).~~

9 ~~(2) Authorize any Commonwealth agency to regulate the~~  
10 ~~possession of firearms in any manner inconsistent with the~~  
11 ~~provisions of this title.~~

12 \* \* \*

13 Section 7. ~~Title 42 is amended by adding a section to read:~~

14 ~~§ 8340.2. Civil immunity for use of force.~~

15 ~~(a) General rule. An actor who uses force:~~

16 ~~(1) in self protection as provided in 18 Pa.C.S. § 505~~  
17 ~~(relating to use of force in self protection);~~

18 ~~(2) in the protection of other persons as provided in 18~~  
19 ~~Pa.C.S. § 506 (relating to use of force for the protection of~~  
20 ~~other persons);~~

21 ~~(3) for the protection of property as provided in 18~~  
22 ~~Pa.C.S. § 507 (relating to use of force for the protection of~~  
23 ~~property);~~

24 ~~(4) in law enforcement as provided in 18 Pa.C.S. § 508~~  
25 ~~(relating to use of force in law enforcement); or~~

26 ~~(5) consistent with the actor's special responsibility~~  
27 ~~for care, discipline or safety of others as provided in 18~~  
28 ~~Pa.C.S. § 509 (relating to use of force by persons with~~  
29 ~~special responsibility for care, discipline or safety of~~  
30 ~~others)~~

1 ~~is justified in using such force and shall be immune from civil~~  
2 ~~liability for personal injuries sustained by a perpetrator which~~  
3 ~~were caused by the acts or omissions of the actor as a result of~~  
4 ~~the use of force.~~

5 ~~(b) Attorney fees and costs. If the actor who satisfies the~~  
6 ~~requirements of subsection (a) prevails in a civil action~~  
7 ~~initiated by or on behalf of a perpetrator against the actor,~~  
8 ~~the court shall award reasonable expenses to the actor.~~  
9 ~~Reasonable expenses shall include, but not be limited to,~~  
10 ~~attorney fees, expert witness fees, court costs and compensation~~  
11 ~~for loss of income.~~

12 ~~(c) Definition. As used in this section, the term~~  
13 ~~"perpetrator" shall mean a person against whom an actor is~~  
14 ~~justified in using force as provided in 18 Pa.C.S. § 505, 506,~~  
15 ~~507, 508 or 509.~~

16 SECTION 2. SECTION 6111(H) OF TITLE 18 IS AMENDED TO READ: ←  
17 § 6111. SALE OR TRANSFER OF FIREARMS.

18 \* \* \*

19 (H) SUBSEQUENT VIOLATION PENALTY.--

20 (1) A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION  
21 SHALL BE A FELONY OF THE SECOND DEGREE [AND SHALL BE  
22 PUNISHABLE BY]. A PERSON WHO AT THE TIME OF SENTENCING HAS  
23 BEEN CONVICTED OF ANOTHER OFFENSE UNDER THIS SECTION SHALL BE  
24 SENTENCED TO A MANDATORY MINIMUM SENTENCE OF IMPRISONMENT OF  
25 FIVE YEARS. A SECOND OR SUBSEQUENT OFFENSE SHALL ALSO RESULT  
26 IN PERMANENT REVOCATION OF ANY LICENSE TO SELL, IMPORT OR  
27 MANUFACTURE A FIREARM.

28 (2) NOTICE OF THE APPLICABILITY OF THIS SUBSECTION TO  
29 THE DEFENDANT AND REASONABLE NOTICE OF THE COMMONWEALTH'S  
30 INTENTION TO PROCEED UNDER THIS SECTION SHALL BE PROVIDED

1 PRIOR TO TRIAL. THE APPLICABILITY OF THIS SECTION SHALL BE  
2 DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER EVIDENCE  
3 PRESENTED AT TRIAL, SHALL AFFORD THE COMMONWEALTH AND THE  
4 DEFENDANT AN OPPORTUNITY TO PRESENT NECESSARY ADDITIONAL  
5 EVIDENCE AND SHALL DETERMINE BY A PREPONDERANCE OF THE  
6 EVIDENCE IF THIS SECTION IS APPLICABLE.

7 (3) THERE SHALL BE NO AUTHORITY FOR A COURT TO IMPOSE ON  
8 A DEFENDANT TO WHICH THIS SUBSECTION IS APPLICABLE A LESSER  
9 SENTENCE THAN PROVIDED FOR IN PARAGRAPH (1), TO PLACE THE  
10 DEFENDANT ON PROBATION OR TO SUSPEND SENTENCE. NOTHING IN  
11 THIS SECTION SHALL PREVENT THE SENTENCING COURT FROM IMPOSING  
12 A SENTENCE GREATER THAN THAT PROVIDED IN THIS SECTION.  
13 SENTENCING GUIDELINES PROMULGATED BY THE PENNSYLVANIA  
14 COMMISSION ON SENTENCING SHALL NOT SUPERSEDE THE MANDATORY  
15 SENTENCES PROVIDED IN THIS SECTION.

16 (4) IF A SENTENCING COURT REFUSES TO APPLY THIS  
17 SUBSECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL HAVE THE  
18 RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE SENTENCING  
19 COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE AND  
20 REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A  
21 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE  
22 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SUBSECTION.

23 (5) FOR THE PURPOSES OF THIS SUBSECTION, A PERSON SHALL  
24 BE DEEMED TO HAVE BEEN CONVICTED OF ANOTHER OFFENSE UNDER  
25 THIS SECTION WHETHER OR NOT JUDGMENT OF SENTENCE HAS BEEN  
26 IMPOSED FOR THAT VIOLATION.

27 \* \* \*

28 SECTION 3. SECTION 8340.2 OF TITLE 42, ADDED JUNE 28, 2011  
29 (P.L.48, NO.10), IS AMENDED TO READ:

30 § 8340.2. CIVIL IMMUNITY FOR USE OF FORCE OR PERSONS ADVERSELY

1                   AFFECTED BY UNLAWFUL REGULATION OF FIREARMS.

2           (A)   GENERAL RULE FOR USE OF FORCE.--AN ACTOR WHO USES FORCE:

3                   (1)   IN SELF-PROTECTION AS PROVIDED IN 18 PA.C.S. § 505  
4                   (RELATING TO USE OF FORCE IN SELF-PROTECTION);

5                   (2)   IN THE PROTECTION OF OTHER PERSONS AS PROVIDED IN 18  
6                   PA.C.S. § 506 (RELATING TO USE OF FORCE FOR THE PROTECTION OF  
7                   OTHER PERSONS);

8                   (3)   FOR THE PROTECTION OF PROPERTY AS PROVIDED IN 18  
9                   PA.C.S. § 507 (RELATING TO USE OF FORCE FOR THE PROTECTION OF  
10                   PROPERTY);

11                   (4)   IN LAW ENFORCEMENT AS PROVIDED IN 18 PA.C.S. § 508  
12                   (RELATING TO USE OF FORCE IN LAW ENFORCEMENT); OR

13                   (5)   CONSISTENT WITH THE ACTOR'S SPECIAL RESPONSIBILITY  
14                   FOR CARE, DISCIPLINE OR SAFETY OF OTHERS AS PROVIDED IN 18  
15                   PA.C.S. § 509 (RELATING TO USE OF FORCE BY PERSONS WITH  
16                   SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF  
17                   OTHERS)

18 IS JUSTIFIED IN USING SUCH FORCE AND SHALL BE IMMUNE FROM CIVIL  
19 LIABILITY FOR PERSONAL INJURIES SUSTAINED BY A PERPETRATOR WHICH  
20 WERE CAUSED BY THE ACTS OR OMISSIONS OF THE ACTOR AS A RESULT OF  
21 THE USE OF FORCE.

22           (A.1) GENERAL RULE FOR UNLAWFUL REGULATION OF FIREARMS.--A  
23 PERSON ADVERSELY AFFECTED BY ANY MANNER OF REGULATION  
24 PROMULGATED OR ENFORCED IN VIOLATION OF 18 PA.C.S. § 6120(A)  
25 (RELATING TO LIMITATION ON THE REGULATION OF FIREARMS AND  
26 AMMUNITION) OR 53 PA.C.S. § 2962(G) (RELATING TO LIMITATION ON  
27 MUNICIPAL POWERS) MAY SEEK DECLARATIVE AND INJUNCTIVE RELIEF AND  
28 THE ACTUAL AND CONSEQUENTIAL DAMAGES ATTRIBUTABLE TO THE  
29 VIOLATION IN AN APPROPRIATE COURT.

30           (B)   ATTORNEY FEES AND COSTS.--



1           (1) IF THE ACTOR WHO SATISFIES THE REQUIREMENTS OF  
2           SUBSECTION (A) PREVAILS IN A CIVIL ACTION INITIATED BY OR ON  
3           BEHALF OF A PERPETRATOR AGAINST THE ACTOR, THE COURT SHALL  
4           AWARD REASONABLE EXPENSES TO THE ACTOR. [REASONABLE EXPENSES  
5           SHALL INCLUDE, BUT NOT BE LIMITED TO, ATTORNEY FEES, EXPERT  
6           WITNESS FEES, COURT COSTS AND COMPENSATION FOR LOSS OF  
7           INCOME.]

8           (2) THE COURT SHALL AWARD REASONABLE EXPENSES TO A  
9           PERSON ADVERSELY AFFECTED IF AN ACTION UNDER SUBSECTION (A.1)  
10          RESULTS IN:

11           (I) A FINAL DETERMINATION BY A COURT IN FAVOR OF THE  
12          PERSON ADVERSELY AFFECTED; OR

13           (II) RESCISSION OR REPEAL OF THE CHALLENGED MANNER  
14          OF REGULATION OR ENFORCEMENT AFTER SUIT HAS BEEN FILED  
15          UNDER SUBSECTION (A.1) BUT PRIOR TO A FINAL DETERMINATION  
16          BY A COURT.

17          (C) [DEFINITION.--AS USED IN THIS SECTION, THE TERM  
18 "PERPETRATOR" SHALL MEAN A PERSON AGAINST WHOM AN ACTOR IS  
19 JUSTIFIED IN USING FORCE AS PROVIDED BY 18 PA.C.S. § 505, 506,  
20 507, 508 OR 509.] DEFINITIONS.--AS USED IN THIS SECTION, THE  
21 FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO  
22 THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES  
23 OTHERWISE:

24          "PERPETRATOR." A PERSON AGAINST WHOM AN ACTOR IS JUSTIFIED  
25 IN USING FORCE AS PROVIDED BY 18 PA.C.S. § 505, 506, 507, 508 OR  
26 509.

27          "PERSON ADVERSELY AFFECTED." ANY OF THE FOLLOWING:

28           (1) A PERSON WHO HAS STANDING UNDER THE LAWS OF THIS  
29          COMMONWEALTH TO BRING AN ACTION UNDER SUBSECTION (A.1).

30           (2) A RESIDENT OF THIS COMMONWEALTH WHO MAY LEGALLY

1 POSSESS A FIREARM UNDER THE LAWS OF THIS COMMONWEALTH AND THE  
2 UNITED STATES AND EITHER:

3 (I) IS SUBJECT TO ANY MANNER OF REGULATION ALLEGED  
4 TO BE PROMULGATED OR ENFORCED IN VIOLATION OF 18 PA.C.S.  
5 § 6120(A) OR OF 53 PA.C.S. § 2962(G) WHETHER OR NOT  
6 SPECIFIC ENFORCEMENT ACTION HAS BEEN INITIATED OR  
7 THREATENED AGAINST THE PERSON OR ANOTHER PERSON; OR

8 (II) WOULD BE, IF THE PERSON WERE PRESENT IN THE  
9 POLITICAL SUBDIVISION IN QUESTION, SUBJECT TO ANY MANNER  
10 OF REGULATION ALLEGED TO BE PROMULGATED OR ENFORCED IN  
11 VIOLATION OF 18 PA.C.S. § 6120(A) OR OF 53 PA.C.S. §  
12 2962(G) WHETHER OR NOT SPECIFIC ENFORCEMENT ACTION HAS  
13 BEEN INITIATED OR THREATENED AGAINST THE PERSON OR  
14 ANOTHER PERSON.

15 (3) A MEMBERSHIP ORGANIZATION, THE MEMBERS OF WHICH  
16 INCLUDE A PERSON DESCRIBED UNDER PARAGRAPH (1) OR (2).  
17 "REASONABLE EXPENSES." THE TERM INCLUDES, BUT IS NOT LIMITED  
18 TO, ATTORNEY FEES, EXPERT WITNESS FEES, COURT COSTS AND  
19 COMPENSATION FOR LOSS OF INCOME.

20 Section § 4. This act shall take effect in 60 days.

