

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 40 Session of 2009

INTRODUCED BY PERRY, METCALFE, BAKER, BARRAR, BELFANTI, BENNINGHOFF, BOBACK, CAUSER, CREIGHTON, CUTLER, DALLY, ELLIS, FAIRCHILD, FLECK, GEIST, GEORGE, GIBBONS, GODSHALL, GRELL, GROVE, HALUSKA, HARHAI, HARRIS, HESS, HICKERNELL, HUTCHINSON, KAUFFMAN, KILLION, KORTZ, LONGIETTI, MARSHALL, MILLER, MOUL, PAYNE, PEIFER, PICKETT, PYLE, QUIGLEY, RAPP, READSHAW, REED, ROAE, ROCK, ROHRER, SAYLOR, SIPTROTH, S. H. SMITH, SOLOBAY, SONNEY, STABACK, STEVENSON, SWANGER, TRUE, TURZAI, VULAKOVICH, DENLINGER AND HORNAMAN, JANUARY 26, 2009

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 26, 2009

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
 2 Judicial Procedure) of the Pennsylvania Consolidated
 3 Statutes, further providing, in general principles of
 4 justification, for definitions, for use of force in self-
 5 protection, for use of force for the protection of other
 6 persons and for licenses to carry firearms; providing for
 7 civil immunity for use of force; and further providing for
 8 sentences for offenses committed with firearms.

9 The General Assembly finds that:

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

14 (2) The Castle Doctrine is a common law doctrine of
 15 ancient origins which declares that a home is a person's
 16 castle.

17 (3) Section 21 of Article I of the Constitution of

1 Pennsylvania guarantees that the "right of the citizens to
2 bear arms in defense of themselves and the State shall not be
3 questioned."

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

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

11 (6) Despite the clear language of 18 Pa.C.S. §§ 6106 and
12 6109, inconsistent statutory and regulatory language appears
13 to limit the ability of law enforcement officers and properly
14 licensed individuals to carry a firearm throughout this
15 Commonwealth.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Section 501 of Title 18 of the Pennsylvania
19 Consolidated Statutes is amended to read:

20 § 501. Definitions.

21 Subject to additional definitions contained in subsequent
22 provisions of this chapter which are applicable to specific
23 provisions of this chapter, the following words and phrases,
24 when used in this chapter shall have, unless the context clearly
25 indicates otherwise, the meanings given to them in this section:

26 "Believes" or "belief." Means "reasonably believes" or
27 "reasonable belief."

28 "Correctional institution." Any penal institution,
29 penitentiary, State farm, reformatory, prison, jail, house of
30 correction, or other institution for the incarceration or

1 custody of persons under sentence for offenses or awaiting trial
2 or sentence for offenses.

3 "Corrections officer." A full-time employee assigned to the
4 Department of Corrections whose principal duty is the care,
5 custody and control of inmates of a penal or correctional
6 institution operated by the Department of Corrections.

7 "Deadly force." Force which, under the circumstances in
8 which it is used, is readily capable of causing death or serious
9 bodily injury.

10 "Dwelling." Any building or structure, including any
11 attached porch, deck or patio, though movable or temporary, or a
12 portion thereof, which is for the time being the home or place
13 of lodging of the actor.

14 "Peace officer." Any person who by virtue of his office or
15 public employment is vested by law with a duty to maintain
16 public order or to make arrests for offenses, whether that duty
17 extends to all offenses or is limited to specific offenses, or
18 any person on active State duty pursuant to [section 311 of the
19 act of May 27, 1949 (P.L.1903, No.568), known as "The Military
20 Code of 1949."]
21 51 Pa.C.S. § 508 (relating to active duty for
emergency). The term "peace officer" shall also include any
22 member of any park police department of any county of the third
23 class.

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

26 "Unlawful force." Force, including confinement, which is
27 employed without the consent of the person against whom it is
28 directed and the employment of which constitutes an offense or
29 actionable tort or would constitute such offense or tort except
30 for a defense (such as the absence of intent, negligence, or

1 mental capacity; duress; youth; or diplomatic status) not
2 amounting to a privilege to use the force. Assent constitutes
3 consent, within the meaning of this section, whether or not it
4 otherwise is legally effective, except assent to the infliction
5 of death or serious bodily injury.

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

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

10 § 505. Use of force in self-protection.

11 * * *

12 (b) Limitations on justifying necessity for use of force.--

13 (1) The use of force is not justifiable under this
14 section:

15 (i) to resist an arrest which the actor knows is
16 being made by a peace officer, although the arrest is
17 unlawful; or

18 (ii) to resist force used by the occupier or
19 possessor of property or by another person on his behalf,
20 where the actor knows that the person using the force is
21 doing so under a claim of right to protect the property,
22 except that this limitation shall not apply if:

23 (A) the actor is a public officer acting in the
24 performance of his duties or a person lawfully
25 assisting him therein or a person making or assisting
26 in a lawful arrest;

27 (B) the actor has been unlawfully dispossessed
28 of the property and is making a reentry or recaption
29 justified by section 507 of this title (relating to
30 use of force for the protection of property); or

1 (C) the actor believes that such force is
2 necessary to protect himself against death or serious
3 bodily injury.

4 (2) The use of deadly force is not justifiable under
5 this section unless the actor believes that such force is
6 necessary to protect himself against death, serious bodily
7 injury, kidnapping or sexual intercourse compelled by force
8 or threat; nor is it justifiable if:

9 (i) the actor, with the intent of causing death or
10 serious bodily injury, provoked the use of force against
11 himself in the same encounter; or

12 (ii) the actor knows that he can avoid the necessity
13 of using such force with complete safety by retreating
14 [or by surrendering possession of a thing to a person
15 asserting a claim of right thereto or by complying with a
16 demand that he abstain from any action which he has no
17 duty to take], except [that:

18 (A)] the actor is not obliged to retreat from
19 his dwelling [or place of work,] unless he was the
20 initial aggressor [or is assailed in his place of
21 work by another person whose place of work the actor
22 knows it to be; and

23 (B) a public officer justified in using force in
24 the performance of his duties or a person justified
25 in using force in his assistance or a person
26 justified in using force in making an arrest or
27 preventing an escape is not obliged to desist from
28 efforts to perform such duty, effect such arrest or
29 prevent such escape because of resistance or
30 threatened resistance by or on behalf of the person

1 against whom such action is directed].

2 (2.1) Except as otherwise provided in paragraph (2.2),
3 an actor is presumed to have a reasonable belief that deadly
4 force is immediately necessary to protect himself against
5 death, serious bodily injury, kidnapping or sexual
6 intercourse compelled by force or threat if both of the
7 following exist:

8 (i) The person against whom the protective force was
9 used was in the process of unlawfully and forcefully
10 entering, or had unlawfully and forcefully entered, a
11 dwelling, residence or occupied vehicle; or the person
12 against whom the protective force was used had unlawfully
13 and forcefully removed or was attempting to unlawfully
14 and forcefully remove another against that other's will
15 from the dwelling, residence or occupied vehicle.

16 (ii) The actor knew or had reason to believe that an
17 unlawful and forceful entry or act was occurring or had
18 occurred.

19 (2.2) The presumption set forth in paragraph (2.1) does
20 not apply if:

21 (i) the person against whom the protective force is
22 used has the right to be in or is a lawful resident of
23 the dwelling, residence or vehicle, such as an owner or
24 lessee;

25 (ii) the person sought to be removed is a child or
26 grandchild or is otherwise in the lawful custody or under
27 the lawful guardianship of the person against whom the
28 protective force is used;

29 (iii) the actor is engaged in a criminal activity or
30 is using the dwelling, residence or occupied vehicle to

1 further a criminal activity; or

2 (iv) the person against whom the protective force is
3 used is a peace officer acting in the performance of his
4 official duties and the peace officer identified himself
5 or the person using force knew or reasonably should have
6 known that the person was a peace officer.

7 (2.3) An actor who is not engaged in a criminal activity
8 and who is attacked in any place where the actor has a right
9 to be has no duty to retreat and has the right to stand his
10 ground and use protective force, including deadly force, if
11 the actor believes it is immediately necessary to do so to
12 protect himself against death, serious bodily injury,
13 kidnapping or sexual intercourse by force or threat.

14 (2.4) Unless one of the exceptions under paragraph (2.2)
15 applies, a person who unlawfully and by force enters or
16 attempts to enter an actor's dwelling, residence or occupied
17 vehicle or removes or attempts to remove another against that
18 other's will from the actor's dwelling, residence or occupied
19 vehicle is presumed to be doing so with the intent to commit:

20 (i) an act resulting in death or serious bodily
21 injury; or

22 (ii) kidnapping or sexual intercourse by force or
23 threat.

24 (2.5) A public officer justified in using force in the
25 performance of his duties or a person justified in using
26 force in his assistance or a person justified in using force
27 in making an arrest or preventing an escape is not obliged to
28 desist from efforts to perform such duty, effect such arrest
29 or prevent such escape because of resistance or threatened
30 resistance by or on behalf of the person against whom such

1 action is directed.

2 (3) Except as [required by paragraphs (1) and (2) of
3 this subsection,] otherwise required by this subsection, a
4 person employing protective force may estimate the necessity
5 thereof under the circumstances as he believes them to be
6 when the force is used, without retreating, surrendering
7 possession, doing any other act which he has no legal duty to
8 do or abstaining from any lawful action.

9 * * *

10 (d) Definition.--As used in this section, the term "criminal
11 activity" means conduct which is a misdemeanor or felony, is not
12 justifiable under this chapter and is the proximate cause of the
13 confrontation between an actor and the person against whom
14 protective force is used.

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

16 § 506. Use of force for the protection of other persons.

17 (a) General rule.--The use of force upon or toward the
18 person of another is justifiable to protect a third person when:

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

24 (2) under the circumstances as the actor believes them
25 to be, the person whom he seeks to protect would be justified
26 in using such protective force; and

27 (3) the actor believes that his intervention is
28 necessary for the protection of such other person.

29 (b) [Exceptions] Exception.--Notwithstanding subsection (a)
30 [of this section:

1 (1) When the actor would be obliged under section 505 of
2 this title to retreat, to surrender the possession of a thing
3 or to comply with a demand before using force in self-
4 protection, he is not obliged to do so before using force for
5 the protection of another person, unless he knows that he can
6 thereby secure the complete safety of such other person.

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

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

19 Section 4. The definition of "loaded" in section 6102 of
20 Title 18 is amended to read:

21 § 6102. Definitions.

22 Subject to additional definitions contained in subsequent
23 provisions of this subchapter which are applicable to specific
24 provisions of this subchapter, the following words and phrases,
25 when used in this subchapter shall have, unless the context
26 clearly indicates otherwise, the meanings given to them in this
27 section:

28 * * *

29 "Loaded." A firearm is loaded if the firing chamber, the
30 nondetachable magazine or, in the case of a revolver, any of the

1 chambers of the cylinder contain ammunition capable of being
2 fired. In the case of a firearm which utilizes a detachable
3 magazine, the term shall mean a magazine suitable for use in
4 said firearm which magazine contains such ammunition and has
5 been inserted in the firearm or is in the same container or,
6 where the container has multiple compartments, the same
7 compartment thereof as the firearm. If the magazine is inserted
8 into a pouch, holder, holster or other protective device that
9 provides for a complete and secure enclosure of the ammunition,
10 then the pouch, holder, holster or other protective device shall
11 be deemed to be a separate compartment.

12 * * *

13 Section 5. Section 6109 of Title 18 is amended by adding
14 subsections to read:

15 § 6109. Licenses.

16 * * *

17 (m.4) Inconsistent provisions.--Notwithstanding the
18 provisions of 75 Pa.C.S. § 7727 (relating to additional
19 limitations on operation), or the act of June 28, 1995 (P.L.89,
20 No.18), known as the Conservation and Natural Resources Act, and
21 regulations promulgated under that act, a firearm may be carried
22 as provided in subsection (a) by:

23 (1) a law enforcement officer whose current
24 identification as a law enforcement officer shall be
25 construed as a valid license to carry a firearm; or

26 (2) any licensee.

27 (m.5) Construction.--Nothing in this section shall be
28 construed to:

29 (1) Permit the hunting or harvesting of any wildlife
30 with a firearm or ammunition not otherwise permitted by 34

1 Pa.C.S. (relating to game).

2 (2) Authorize any Commonwealth agency to regulate the
3 possession of firearms in any manner inconsistent with the
4 provisions of this title.

5 * * *

6 Section 6. Title 42 is amended by adding a section to read:
7 § 8340.2. Civil immunity for use of force.

8 (a) General rule.--An actor who uses force:

9 (1) in self-protection as provided in 18 Pa.C.S. § 505
10 (relating to use of force in self-protection);

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

14 (3) for the protection of property as provided in 18
15 Pa.C.S. § 507 (relating to use of force for the protection of
16 property);

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

19 (5) consistent with the actor's special responsibility
20 for care, discipline or safety of others as provided in 18
21 Pa.C.S. § 509 (relating to use of force by persons with
22 special responsibility for care, discipline or safety of
23 others);

24 is justified in using such force and shall be immune from civil
25 liability for personal injuries sustained by a perpetrator which
26 were caused by the acts or omissions of the actor as a result of
27 the use of force.

28 (b) Attorney fees and costs.--If the actor who satisfies the
29 requirements of subsection (a) prevails in a civil action
30 initiated by or on behalf of a perpetrator against the actor,

1 the court shall award reasonable expenses to the actor.
2 Reasonable expenses shall include, but not be limited to,
3 attorney fees, expert witness fees, court costs and compensation
4 for loss of income.

5 (c) Definition.--As used in this section, the term
6 "perpetrator" shall mean a person against whom an actor is
7 justified in using force as provided by 18 Pa.C.S. § 505, 506,
8 507, 508 or 509.

9 Section 7. This act shall take effect in 60 days.