

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 842 Session of 2009

INTRODUCED BY ALLOWAY, SCARNATI, KASUNIC, ROBBINS, EICHELBERGER, BROWNE, FOLMER, PIPPY, RAFFERTY, VOGEL, WOZNIAK, WONDERLING, BOSCOLA, ORIE, BAKER, D. WHITE, WAUGH, PILEGGI, BRUBAKER, ARGALL, PICCOLA, SMUCKER, McILHINNEY, CORMAN, TOMLINSON, YAW, WARD, STOUT, MUSTO AND LOGAN, MAY 5, 2009

REFERRED TO JUDICIARY, MAY 5, 2009

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 and for licenses to carry firearms; and providing for
7 civil immunity for use of force.

8 The General Assembly finds that:

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

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

16 (3) Section 21 of Article I of the Constitution of
17 Pennsylvania guarantees that the "right of the citizens to
18 bear arms in defense of themselves and the State shall not be
19 questioned."

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

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

8 (6) Despite the clear language of 18 Pa.C.S. §§ 6106 and
9 6109, inconsistent statutory and regulatory language appears
10 to limit the ability of law enforcement officers and properly
11 licensed individuals to carry a firearm throughout this
12 Commonwealth.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 501 of Title 18 of the Pennsylvania
16 Consolidated Statutes is amended to read:
17 § 501. Definitions.

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

23 "Believes" or "belief." Means "reasonably believes" or
24 "reasonable belief."

25 "Correctional institution." Any penal institution,
26 penitentiary, State farm, reformatory, prison, jail, house of
27 correction, or other institution for the incarceration or
28 custody of persons under sentence for offenses or awaiting trial
29 or sentence for offenses.

30 "Corrections officer." A full-time employee assigned to the

1 Department of Corrections whose principal duty is the care,
2 custody and control of inmates of a penal or correctional
3 institution operated by the Department of Corrections.

4 "Deadly force." Force which, under the circumstances in
5 which it is used, is readily capable of causing death or serious
6 bodily injury.

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

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

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

23 "Unlawful force." Force, including confinement, which is
24 employed without the consent of the person against whom it is
25 directed and the employment of which constitutes an offense or
26 actionable tort or would constitute such offense or tort except
27 for a defense (such as the absence of intent, negligence, or
28 mental capacity; duress; youth; or diplomatic status) not
29 amounting to a privilege to use the force. Assent constitutes
30 consent, within the meaning of this section, whether or not it

1 otherwise is legally effective, except assent to the infliction
2 of death or serious bodily injury.

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

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

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

8 * * *

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

10 (1) The use of force is not justifiable under this
11 section:

12 (i) to resist an arrest which the actor knows is
13 being made by a peace officer, although the arrest is
14 unlawful; or

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

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

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

28 (C) the actor believes that such force is
29 necessary to protect himself against death or serious
30 bodily injury.

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

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

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

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

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

29 (2.1) Except as otherwise provided in paragraph (2.2),
30 an actor is presumed to have a reasonable belief that deadly

1 force is immediately necessary to protect himself against
2 death, serious bodily injury, kidnapping or sexual
3 intercourse compelled by force or threat if both of the
4 following exist:

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

13 (ii) The actor knew or had reason to believe that an
14 unlawful and forceful entry or act was occurring or had
15 occurred.

16 (2.2) The presumption set forth in paragraph (2.1) does
17 not apply if:

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

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

26 (iii) the actor is engaged in a criminal activity or
27 is using the dwelling, residence or occupied vehicle to
28 further a criminal activity; or

29 (iv) the person against whom the protective force is
30 used is a peace officer acting in the performance of his

1 official duties and the peace officer identified himself
2 or the person using force knew or reasonably should have
3 known that the person was a peace officer.

4 (2.3) An actor who is not engaged in a criminal activity
5 and who is attacked in any place where the actor has a right
6 to be has no duty to retreat and has the right to stand his
7 ground and use protective force, including deadly force, if
8 the actor believes it is immediately necessary to do so to
9 protect himself against death, serious bodily injury,
10 kidnapping or sexual intercourse by force or threat.

11 (2.4) 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 (2.5) 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 the proximate cause of the
10 confrontation between an actor and the person against whom
11 protective force 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. The definition of "loaded" in section 6102 of
17 Title 18 is amended to read:

18 § 6102. Definitions.

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

25 * * *

26 "Loaded." A firearm is loaded if the firing chamber, the
27 nondetachable magazine or, in the case of a revolver, any of the
28 chambers of the cylinder contain ammunition capable of being
29 fired. In the case of a firearm which utilizes a detachable
30 magazine, the term shall mean a magazine suitable for use in

1 said firearm which magazine contains such ammunition and has
2 been inserted in the firearm or is in the same container or,
3 where the container has multiple compartments, the same
4 compartment thereof as the firearm. If the magazine is inserted
5 into a pouch, holder, holster or other protective device that
6 provides for a complete and secure enclosure of the ammunition,
7 then the pouch, holder, holster or other protective device shall
8 be deemed to be a separate compartment.

9 * * *

10 Section 5. Section 6109(m.3) of Title 18 is amended and the
11 section is amended by adding a subsection to read:

12 § 6109. Licenses.

13 * * *

14 (m.3) Construction.--

15 (1) Nothing in this section shall be construed to permit
16 the hunting or harvesting of any wildlife with a firearm or
17 ammunition not otherwise permitted by 34 Pa.C.S. (relating to
18 game).

19 (2) Nothing in this section shall be construed to:

20 (i) Permit the hunting or harvesting of any wildlife
21 with a firearm or ammunition not otherwise permitted by
22 34 Pa.C.S.

23 (ii) Authorize any Commonwealth agency to regulate
24 the possession of firearms in any manner inconsistent
25 with the provisions of this title.

26 (m.4) Inconsistent provisions.--Notwithstanding the
27 provisions of 75 Pa.C.S. § 7727 (relating to additional
28 limitations on operation), or the act of June 28, 1995 (P.L.89,
29 No.18), known as the Conservation and Natural Resources Act, and
30 regulations promulgated under that act, a firearm may be carried

1 as provided in subsection (a) by:

2 (1) a law enforcement officer whose current
3 identification as a law enforcement officer shall be
4 construed as a valid license to carry a firearm; or

5 (2) any licensee.

6 * * *

7 Section 6. Title 42 is amended by adding a section to read:

8 § 8340.2. Civil immunity for use of force.

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

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

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

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

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

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

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

29 (b) Attorney fees and costs.--If the actor who satisfies the
30 requirements of subsection (a) prevails in a civil action

1 initiated by or on behalf of a perpetrator against the actor,
2 the court shall award reasonable expenses to the actor.
3 Reasonable expenses shall include, but not be limited to,
4 attorney fees, expert witness fees, court costs and compensation
5 for loss of income.

6 (c) Definition.--As used in this section, the term
7 "perpetrator" shall mean a person against whom an actor is
8 justified in using force as provided by 18 Pa.C.S. § 505, 506,
9 507, 508 or 509.

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