

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 AND WAUGH, JANUARY 26, 2011

REFERRED TO JUDICIARY, JANUARY 26, 2011

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.

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
18 Pennsylvania guarantees that the "right of the citizens to
19 bear arms in defense of themselves and the State shall not be

1 questioned."

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

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

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

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

13 § 501. Definitions.

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

19 "Believes" or "belief." Means "reasonably believes" or
20 "reasonable belief."

21 "Correctional institution." Any penal institution,
22 penitentiary, State farm, reformatory, prison, jail, house of
23 correction, or other institution for the incarceration or
24 custody of persons under sentence for offenses or awaiting trial
25 or sentence for offenses.

26 "Corrections officer." A full-time employee assigned to the
27 Department of Corrections whose principal duty is the care,
28 custody and control of inmates of a penal or correctional
29 institution operated by the Department of Corrections.

30 "Deadly force." Force which, under the circumstances in

1 which it is used, is readily capable of causing death or serious
2 bodily injury.

3 "Dwelling." Any building or structure, including any
4 attached porch, deck or patio, though movable or temporary, or a
5 portion thereof, which is for the time being the home or place
6 of lodging of the actor.

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

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

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

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

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

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

4 * * *

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

6 (1) The use of force is not justifiable under this
7 section:

8 (i) to resist an arrest which the actor knows is
9 being made by a peace officer, although the arrest is
10 unlawful; or

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

16 (A) the actor is a public officer acting in the
17 performance of his duties or a person lawfully
18 assisting him therein or a person making or assisting
19 in a lawful arrest;

20 (B) the actor has been unlawfully dispossessed
21 of the property and is making a reentry or recaption
22 justified by section 507 of this title (relating to
23 use of force for the protection of property); or

24 (C) the actor believes that such force is
25 necessary to protect himself against death or serious
26 bodily injury.

27 (2) The use of deadly force is not justifiable under
28 this section unless the actor believes that such force is
29 necessary to protect himself against death, serious bodily
30 injury, kidnapping or sexual intercourse compelled by force

1 or threat; nor is it justifiable if:

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

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

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

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

25 (2.1) Except as otherwise provided in paragraph (2.2),
26 an actor is presumed to have a reasonable belief that deadly
27 force is immediately necessary to protect himself against
28 death, serious bodily injury, kidnapping or sexual
29 intercourse compelled by force or threat if both of the
30 following conditions exist:

1 (i) The person against whom the force is used is in
2 the process of unlawfully and forcefully entering, or has
3 unlawfully and forcefully entered and is present within,
4 a dwelling, residence or occupied vehicle; or the person
5 against whom the force is used is or is attempting to
6 unlawfully and forcefully remove another against that
7 other's will from the dwelling, residence or occupied
8 vehicle.

9 (ii) The actor knows or has reason to believe that
10 the unlawful and forceful entry or act is occurring or
11 has occurred.

12 (2.2) The presumption set forth in paragraph (2.1) does
13 not apply if:

14 (i) the person against whom the force is used has
15 the right to be in or is a lawful resident of the
16 dwelling, residence or vehicle, such as an owner or
17 lessee;

18 (ii) the person sought to be removed is a child or
19 grandchild or is otherwise in the lawful custody or under
20 the lawful guardianship of the person against whom the
21 protective force is used;

22 (iii) the actor is engaged in a criminal activity or
23 is using the dwelling, residence or occupied vehicle to
24 further a criminal activity; or

25 (iv) the person against whom the force is used is a
26 peace officer acting in the performance of his official
27 duties and the actor using force knew or reasonably
28 should have known that the person was a peace officer.

29 (2.3) An actor who is not engaged in a criminal
30 activity, and who is attacked in any place where the actor

1 would have a duty to retreat under paragraph (2)(ii), has no
2 duty to retreat and has the right to stand his ground and use
3 force, including deadly force, if:

4 (i) the actor has a right to be in the place where
5 he was attacked;

6 (ii) the actor believes it is immediately necessary
7 to do so to protect himself against death, serious bodily
8 injury, kidnapping or sexual intercourse by force or
9 threat; and

10 (iii) the person against whom the force is used
11 displays or otherwise uses:

12 (A) a firearm or replica of a firearm as defined
13 in 42 Pa.C.S. § 9712 (relating to sentences for
14 offenses committed with firearms); or

15 (B) any other weapon readily or apparently
16 capable of lethal use.

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

23 (i) an act resulting in death or serious bodily
24 injury; or

25 (ii) kidnapping or sexual intercourse by force or
26 threat.

27 (2.5) A public officer justified in using force in the
28 performance of his duties or a person justified in using
29 force in his assistance or a person justified in using force
30 in making an arrest or preventing an escape is not obliged to

1 desist from efforts to perform such duty, effect such arrest
2 or prevent such escape because of resistance or threatened
3 resistance by or on behalf of the person against whom such
4 action is directed.

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

12 * * *

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

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

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

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

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

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

30 (3) the actor believes that his intervention is

1 necessary for the protection of such other person.

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

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

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

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

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

25 § 3903. Grading of theft offenses.

26 (a) Felony of the second degree.--Theft constitutes a felony
27 of the second degree if:

28 (1) The offense is committed during a manmade disaster,
29 a natural disaster or a war-caused disaster and constitutes a
30 violation of section 3921 (relating to theft by unlawful

1 taking or disposition), 3925 (relating to receiving stolen
2 property), 3928 (relating to unauthorized use of automobiles
3 and other vehicles) or 3929 (relating to retail theft).

4 (2) The property stolen is a firearm.

5 (3) In the case of theft by receiving stolen property,
6 the property received, retained or disposed of is a firearm
7 [and the receiver is in the business of buying or selling
8 stolen property].

9 (4) The property stolen is any amount of anhydrous
10 ammonia.

11 (a.1) Felony of the third degree.--Except as provided in
12 subsection (a) or (a.2), theft constitutes a felony of the third
13 degree if the amount involved exceeds \$2,000, or if the property
14 stolen is an automobile, airplane, motorcycle, motorboat or
15 other motor-propelled vehicle, or in the case of theft by
16 receiving stolen property, if the receiver is in the business of
17 buying or selling stolen property.

18 (a.2) Felony of the first degree.--Theft constitutes a
19 felony of the first degree if, in the case of theft by receiving
20 stolen property, the property received, retained or disposed of
21 is a firearm and the receiver is in the business of buying or
22 selling stolen property.

23 (b) Other grades.--Theft not within subsection (a) [or],
24 (a.1) [of this section] or (a.2), constitutes a misdemeanor of
25 the first degree, except that if the property was not taken from
26 the person or by threat, or in breach of fiduciary obligation,
27 and:

28 (1) the amount involved was \$50 or more but less than
29 \$200 the offense constitutes a misdemeanor of the second
30 degree; or

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

* * *

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

§ 6102. Definitions.

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

* * *

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

* * *

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

§ 6109. Licenses.

* * *

(m.3) Construction.--Nothing in this section shall be construed to [permit];

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

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

* * *

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

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

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

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

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

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

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

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

1 the use of force.

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

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

13 Section 8. This act shall take effect in 60 days.