

1 **USE OF FORCE, INCLUDING DEADLY**
2 **FORCE, IN DEFENSE OF PROPERTY**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Mike Thompson**

6 **This act modifies the Criminal Code to allow use of deadly force in defense of real property.**

7 **The act provides the elements of situations when deadly force is justified.**

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **76-2-406**, as enacted by Chapter 196, Laws of Utah 1973

11 ENACTS:

12 **76-2-407**, Utah Code Annotated 1953

13 *Be it enacted by the Legislature of the state of Utah:*

14 Section 1. Section **76-2-406** is amended to read:

15 **76-2-406. Force in defense of property.**

16 A person is justified in using force, other than deadly force, against another ~~[when and to~~
17 ~~the extent that]~~ if he reasonably believes that force is necessary to prevent or terminate criminal
18 interference with [real property or] personal property, or to prevent or terminate commission of
19 a criminal offense against real property other than under Section 76-2-407, and the real or personal
20 property is:

21 (1) lawfully in his possession; or

22 (2) lawfully in the possession of a member of his immediate family; or

23 (3) belonging to a person whose property he has a legal duty to protect.

24 Section 2. Section **76-2-407** is enacted to read:

25 **76-2-407. Force in defense of real property.**

26 (1) A person is justified in using force intended or likely to cause death or serious bodily
27 injury against another in his defense of real property other than his habitation if:



28 (a) he is in lawful possession of the real property;

29 (b) he reasonably believes that the force is necessary to prevent or terminate the other
30 person's trespass onto the real property;

31 (c) the trespass is made or attempted in a violent and tumultuous manner, surreptitiously,
32 or by stealth; and

33 (d) (i) the person reasonably believes that the trespass is attempted or made for the purpose
34 of assaulting or committing violence against any person, dwelling, or being on the real property
35 and he reasonably believes that the force is necessary to prevent the assault or offer of personal
36 violence; or

37 (ii) the person reasonably believes that the trespass is made or attempted for the purpose
38 of committing a felony on the real property and that the force is necessary to prevent the
39 commission of the felony.

40 (2) The person using force or deadly force in defense of real property is presumed for the
41 purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of
42 imminent peril of death or serious bodily injury if the trespass or attempted trespass is unlawful
43 and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously
44 or by stealth, or for the purpose of committing a felony.

Legislative Review Note
as of 2-25-02 3:20 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel