

**Representative Carl Wimmer** proposes the following substitute bill:

**PROTECTION OF PROPERTY AMENDMENT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl Wimmer**

Senate Sponsor: Mark B. Madsen

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding the offense of use of force in defense of property.

**Highlighted Provisions:**

This bill:

► amends the provision regarding justified use of force in defense of property to provide that the court may consider, in determining reasonableness:

- extent of damage;
- previous damage;
- prior threats of injury or damage; and
- prior pattern of abuse or violence

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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



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

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

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

(1) A person is justified in using force, other than deadly force, against another when and to the extent that ~~[he]~~ the person reasonably believes that force is necessary to prevent or terminate another person's criminal interference with real property or personal property:

~~[(1) Lawfully]~~ (a) lawfully in ~~[his]~~ the person's possession; ~~[or]~~

~~[(2) Lawfully]~~ (b) lawfully in the possession of a member of ~~[his]~~ the person's immediate family; or

~~[(3) Belonging]~~ (c) belonging to a person whose property ~~[he]~~ the person has a legal duty to protect.

(2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other factors, consider the following factors:

(a) the apparent or perceived extent of the damage to the property;

(b) property damage previously caused by the other person;

(c) threats of personal injury or damage to property that have been made previously by the other person; and

(d) any patterns of abuse or violence between the person and the other person.