

DEFENSIVE FORCE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill concerns when defensive force may be used in certain situations.

Highlighted Provisions:

This bill:

- modifies provisions concerning when defensive force or deadly force may be used in certain situations involving individuals and specific types of property; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-2-405, as last amended by Laws of Utah 1985, Chapter 252

76-2-406, as last amended by Laws of Utah 2010, Chapter 377

76-2-407, as enacted by Laws of Utah 2002, Chapter 273

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

Section 1. Section 76-2-405 is amended to read:

76-2-405 . Force or deadly force in defense of habitation, vehicle, or place of business or employment.

(1) [A person] Except as provided in Subsection (2), an actor is justified in using force against [another] an individual when and to the extent that [he] the actor reasonably believes that the force is necessary to prevent or terminate the [other's] individual's unlawful entry into the actor's vehicle or unlawful entry or attack upon [his] the actor's

29 habitation or place of business or employment.

30 (2) [~~;~~ however, he] An actor is justified in [the use of] using force against the individual
 31 described in Subsection (1) [which] that is intended or likely to cause death or serious
 32 bodily injury to the individual only if:

33 (a) (i) the entry is made or attempted in a violent and tumultuous manner,
 34 surreptitiously, or by stealth[~~;~~] ; and

35 (ii) [~~he-~~] the actor reasonably believes:

36 (A) that the entry is attempted or made for the purpose of assaulting or [~~offering-~~]
 37 perpetrating personal violence [to any person, dwelling, or being] against any
 38 individual who dwells in or is present in the habitation or is present in the
 39 vehicle, or place of business or employment; and

40 (B) [~~he reasonably believes-~~]that the force is necessary to prevent the assault or [~~offer-~~]
 41 perpetration of personal violence; or

42 (b) [~~he-~~] the actor reasonably believes that:

43 (i) the entry is made or attempted for the purpose of committing a felony in the
 44 habitation; and

45 (ii) [~~that-~~]the force is necessary to prevent the commission of the felony.

46 [(2)] (3) (a) [~~The person using-~~] An actor who uses force or deadly force [in defense of]
 47 against an individual to defend the actor's habitation is presumed for the purpose of
 48 both civil and criminal cases to have acted reasonably and had a reasonable fear of
 49 imminent peril of death or serious bodily injury if the entry or attempted entry is:

50 (i) [~~is-~~] unlawful; and

51 (ii) [~~is-~~] made or attempted:

52 (A) by use of force[~~;~~ or] ;

53 (B) in a violent and tumultuous manner[~~;~~ or] ;

54 (C) surreptitiously or by stealth[~~;~~ or] ; or

55 (D) for the purpose of committing a felony.

56 (b) An actor who uses force or deadly force against an individual to defend the actor's
 57 vehicle or place of business or employment is presumed for the purpose of both civil
 58 and criminal cases to have acted reasonably and had a reasonable fear of imminent
 59 peril of death or serious bodily injury if:

60 (i) the actor knew or had reason to believe that the individual:

61 (A) entered, or attempted to enter, unlawfully and with force, the actor's occupied
 62 vehicle or place of business or employment; or

- 63 (B) removed, or attempted to remove, unlawfully and with force, the actor from
64 the actor's vehicle or place of business or employment; and
65 (ii) the actor:
66 (A) did not provoke the individual; and
67 (B) was not otherwise engaged in criminal activity, other than a traffic offense, at
68 the time the force was used.
- 69 (c) The presumption in Subsection (3)(b) applies to an actor's use of force or deadly
70 force against an individual to protect a third person if:
71 (i) under the circumstances as the actor believes them to be, the actor would be
72 justified under Subsection (3)(b) in using force or deadly force to protect the actor
73 against the unlawful force or unlawful deadly force that the actor reasonably
74 believes to be threatening the third person the actor seeks to protect; and
75 (ii) the actor reasonably believes that the actor's intervention is immediately
76 necessary to protect the third person.

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

78 **76-2-406 . Force in defense of property -- Affirmative defense.**

- 79 (1) [~~A person~~] Except as provided in Section 76-2-405, an actor is justified in using force,
80 other than deadly force, against another individual when and to the extent that the [
81 person] actor reasonably believes that force is necessary to prevent or terminate [~~another~~
82 person's] the individual's criminal interference with real property or personal property:
83 (a) lawfully in the [person's] actor's possession;
84 (b) lawfully in the possession of a member of the [person's] actor's immediate family; or
85 (c) belonging to [~~a person~~] an individual whose property the [person] actor has a legal
86 duty to protect.
- 87 (2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to
88 any other factors, consider the following factors:
89 (a) the apparent or perceived extent of the damage to the property;
90 (b) property damage previously caused by the other [person] individual;
91 (c) threats of personal injury or damage to property that have been made previously by
92 the other [person] individual; and
93 (d) any patterns of abuse or violence between the [person] actor and the [~~other person~~
94 individual.

95 Section 3. Section **76-2-407** is amended to read:

96 **76-2-407 . Deadly force in defense of individuals on real property.**

- 97 (1) As used in this section, "forcible felony" means the same as that term is defined in
 98 Section 76-2-402.
- 99 (2) ~~[A person]~~ An actor is justified in using force intended or likely to cause death or serious
 100 bodily injury against ~~[another]~~ an individual in ~~[his]~~ the actor's defense of ~~[persons]~~
 101 another individual on real property other than ~~[his habitation]~~ the places or situations
 102 described in Section 76-2-405 if:
- 103 (a) ~~[he]~~ the actor is in lawful possession of the real property;
- 104 (b) ~~[he]~~ the actor reasonably believes that the force is necessary to prevent or terminate
 105 the ~~[other person's]~~ individual's trespass onto the real property;
- 106 (c) the individual's trespass is made or attempted by use of force or in a violent and
 107 tumultuous manner; and
- 108 (d) (i) the ~~[person]~~ actor reasonably believes:
- 109 (A) that the individual's trespass is attempted or made for the purpose of
 110 committing violence against ~~[any person]~~ an individual on the real property; and
 111 (B) ~~[he reasonably believes]~~ that the force is necessary to prevent personal
 112 violence; or
- 113 (ii) the ~~[person]~~ actor reasonably believes that:
- 114 (A) the individual's trespass is made or attempted for the purpose of committing a
 115 forcible felony ~~[as defined in Section 76-2-402]~~ that poses imminent peril of
 116 death or serious bodily injury to ~~[a person]~~ an individual on the real property;
 117 and
 118 (B) ~~[that]~~ the force is necessary to prevent the commission of ~~[that]~~ the forcible
 119 felony.

- 120 ~~[(2)]~~ (3) ~~[The person using]~~ An actor who uses deadly force in defense of ~~[persons]~~ an
 121 individual on real property under Subsection ~~[(1)]~~ (2) is presumed for the purpose of
 122 both civil and criminal cases to have acted reasonably and had a reasonable fear of
 123 imminent peril of death or serious bodily injury if the trespass or attempted trespass;
 124 (a) is unlawful; and
 125 (b) is made or attempted:
- 126 (i) by use of force~~[, or]~~ ;
- 127 (ii) in a violent and tumultuous manner~~[,]~~ ; or
- 128 (iii) for the purpose of committing a forcible felony.

129 Section 4. **Effective date.**

130 This bill takes effect on May 1, 2024.