

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



28 **business or employment.**

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

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

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

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

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

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

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

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

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

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

53 (i) ~~[is]~~ unlawful; and

54 (ii) ~~[is]~~ made or attempted;

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

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

57 (C) surreptitiously or by stealth~~[-or]; or~~

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

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

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

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

66 (B) removed, or attempted to remove, unlawfully and with force, the actor from the
 67 actor's vehicle or place of business or employment; and

68 (ii) the actor:

69 (A) did not provoke the individual; and

70 (B) was not otherwise engaged in criminal activity, other than a traffic offense, at the
 71 time the force was used.

72 (c) The presumption in Subsection (3)(b) applies to an actor's use of force or deadly
 73 force against an individual to protect a third person if:

74 (i) under the circumstances as the actor believes them to be, the actor would be
 75 justified under Subsection (3)(b) in using force or deadly force to protect the actor against the
 76 unlawful force or unlawful deadly force that the actor reasonably believes to be threatening the
 77 third person the actor seeks to protect; and

78 (ii) the actor reasonably believes that the actor's intervention is immediately necessary
 79 to protect the third person.

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

81 **76-2-406. Force in defense of property -- Affirmative defense.**

82 (1) [~~A person~~] Except as provided in Section 76-2-405, an actor is justified in using
 83 force, other than deadly force, against another individual when and to the extent that the
 84 [person] actor reasonably believes that force is necessary to prevent or terminate [another
 85 person's] the individual's criminal interference with real property or personal property:

86 (a) lawfully in the [~~person's~~] actor's possession;

87 (b) lawfully in the possession of a member of the [~~person's~~] actor's immediate family;

88 or

89 (c) belonging to [~~a person~~] an individual whose property the [~~person~~] actor has a legal

90 duty to protect.

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

- 93 (a) the apparent or perceived extent of the damage to the property;
- 94 (b) property damage previously caused by the other ~~[person]~~ individual;
- 95 (c) threats of personal injury or damage to property that have been made previously by
96 the other ~~[person]~~ individual; and

97 (d) any patterns of abuse or violence between the ~~[person]~~ actor and the ~~[other person]~~
98 individual.

99 Section 3. Section ~~76-2-407~~ is amended to read:

100 **76-2-407. Deadly force in defense of individuals on real property.**

101 (1) As used in this section, "forcible felony" means the same as that term is defined in
102 Section ~~76-2-402~~.

103 (2) ~~[A person]~~ An actor is justified in using force intended or likely to cause death or
104 serious bodily injury against ~~[another]~~ an individual in ~~[his]~~ the actor's defense of ~~[persons]~~
105 another individual on real property other than ~~[his habitation]~~ the places or situations described
106 in Section ~~76-2-405~~ if:

- 107 (a) ~~[he]~~ the actor is in lawful possession of the real property;
- 108 (b) ~~[he]~~ the actor reasonably believes that the force is necessary to prevent or terminate
109 the ~~[other person's]~~ individual's trespass onto the real property;
- 110 (c) the individual's trespass is made or attempted by use of force or in a violent and
111 tumultuous manner; and

112 (d) (i) the ~~[person]~~ actor reasonably believes:
113 (A) that the individual's trespass is attempted or made for the purpose of committing
114 violence against ~~[any person]~~ an individual on the real property; and

115 (B) ~~[he reasonably believes]~~ that the force is necessary to prevent personal violence; or
116 (ii) the ~~[person]~~ actor reasonably believes that:

117 (A) the individual's trespass is made or attempted for the purpose of committing a
118 forcible felony ~~[as defined in Section ~~76-2-402~~]~~ that poses imminent peril of death or serious
119 bodily injury to ~~[a person]~~ an individual on the real property; and

120 (B) ~~[that]~~ the force is necessary to prevent the commission of ~~[that]~~ the forcible felony.

121 [~~(2)~~] (3) [~~The person using~~] An actor who uses deadly force in defense of [~~persons~~] an
122 individual on real property under Subsection [~~(1)~~] (2) is presumed for the purpose of both civil
123 and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of
124 death or serious bodily injury if the trespass or attempted trespass;

125 (a) is unlawful; and

126 (b) is made or attempted;

127 (i) by use of force~~[, or]~~;

128 (ii) in a violent and tumultuous manner~~;~~; or

129 (iii) for the purpose of committing a forcible felony.

130 Section 4. **Effective date.**

131 This bill takes effect on May 1, 2024.