

SECOND REGULAR SESSION

# SENATE BILL NO. 1037

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 8, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6383S.011

## AN ACT

To repeal section 563.031, RSMo, and to enact in lieu thereof one new section relating to the duty to retreat.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 563.031, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 563.031, to read as follows:

563.031. 1. A person may, subject to the provisions of subsection 2 of this  
2 section, use physical force upon another person when and to the extent he or she  
3 reasonably believes such force to be necessary to defend himself or herself or a  
4 third person from what he or she reasonably believes to be the use or imminent  
5 use of unlawful force by such other person, unless:

6 (1) The actor was the initial aggressor; except that in such case his or her  
7 use of force is nevertheless justifiable provided:

8 (a) He or she has withdrawn from the encounter and effectively  
9 communicated such withdrawal to such other person but the latter persists in  
10 continuing the incident by the use or threatened use of unlawful force; or

11 (b) He or she is a law enforcement officer and as such is an aggressor  
12 pursuant to section 563.046; or

13 (c) The aggressor is justified under some other provision of this chapter  
14 or other provision of law;

15 (2) Under the circumstances as the actor reasonably believes them to be,  
16 the person whom he or she seeks to protect would not be justified in using such  
17 protective force;

18 (3) The actor was attempting to commit, committing, or escaping after the  
19 commission of a forcible felony.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20           2. A person may not use deadly force upon another person under the  
21 circumstances specified in subsection 1 of this section unless:

22           (1) He or she reasonably believes that such deadly force is necessary to  
23 protect himself, or herself or her unborn child, or another against death, serious  
24 physical injury, or any forcible felony;

25           (2) Such force is used against a person who unlawfully enters, remains  
26 after unlawfully entering, or attempts to unlawfully enter a dwelling, residence,  
27 or vehicle lawfully occupied by such person; or

28           (3) Such force is used against a person who unlawfully enters, remains  
29 after unlawfully entering, or attempts to unlawfully enter private property that  
30 is owned or leased by an individual claiming a justification of using protective  
31 force under this section.

32           3. A person **who is not engaged in an unlawful activity** does not  
33 have a duty to retreat from [a dwelling, residence, or vehicle where the person is  
34 not unlawfully entering or unlawfully remaining. A person does not have a duty  
35 to retreat from private property that is owned or leased by such individual] **any**  
36 **place he or she has a right to be.**

37           4. The justification afforded by this section extends to the use of physical  
38 restraint as protective force provided that the actor takes all reasonable measures  
39 to terminate the restraint as soon as it is reasonable to do so.

40           5. The defendant shall have the burden of injecting the issue of  
41 justification under this section. If a defendant asserts that his or her use of force  
42 is described under subdivision (2) of subsection 2 of this section, the burden shall  
43 then be on the state to prove beyond a reasonable doubt that the defendant did  
44 not reasonably believe that the use of such force was necessary to defend against  
45 what he or she reasonably believed was the use or imminent use of unlawful  
46 force.

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