

CS FOR SENATE BILL NO. 200(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/3/06

Referred: Rules

Sponsor(s): SENATORS THERRIAULT, Dyson, Huggins

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to defense of self, other persons, property, or services."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.330. Immunity: Use of defensive force.** (a) A person who uses
5 force in defense of self, other persons, or property as permitted in AS 11.81 is not
6 liable for the death of or injury to the person against whom the force was intended to
7 be used, unless the person against whom force was used was a

8 (1) peace officer, whether on or off duty, who was engaged in the
9 performance of official duties; or

10 (2) fire fighter, emergency medical technician, or paramedic engaged
11 in the performance of official duties.

12 (b) The court shall award reasonable attorney fees, court costs, compensation
13 for loss of income, and all expenses incurred by the defendant in defense of a civil
14 action brought by a plaintiff if the court finds that the defendant is not liable under (a)
15 of this section.

1 * **Sec. 2.** AS 11.81.330 is amended to read:

2 **Sec. 11.81.330. Justification: Use of nondeadly force in defense of self.** (a)

3 A person **is justified in using** [MAY USE] nondeadly force upon another when and to
4 the extent the person reasonably believes it is necessary for **self-defense** [SELF
5 DEFENSE] against what the person reasonably believes to be the use of unlawful
6 force by the other **person**, unless

7 (1) **the person used** the force **in** [INVOLVED WAS THE PRODUCT
8 OF] mutual combat not authorized by law;

9 (2) the person claiming **self-defense** [THE DEFENSE OF
10 JUSTIFICATION] provoked the other's conduct with intent to cause physical injury to
11 the other;

12 (3) the person claiming **self-defense** [THE DEFENSE OF
13 JUSTIFICATION] was the initial aggressor; [OR]

14 (4) the force **used** [APPLIED] was the result of using a deadly weapon
15 **or dangerous instrument** the person claiming **self-defense** [THE DEFENSE OF
16 JUSTIFICATION] possessed while

17 (A) acting alone or with others to further a felony criminal
18 objective of the person or one or more other persons; or

19 (B) a participant in a felony transaction or purported
20 transaction or in immediate flight from a felony transaction or purported
21 transaction in violation of AS 11.71;

22 **(C) acting alone or with others with intent to establish or**
23 **maintain control over a geographic area or neighborhood, or in response**
24 **to perceived conduct by a rival or perceived rival, or a member or**
25 **perceived member of a rival group, for control over the area, if the person**
26 **using deadly force, or the group on whose behalf the person is acting, has**
27 **a history or reputation for violence among civilians; or**

28 **(D) the weapon used by the person was a firearm that was**
29 **illegal under state or federal law for the person to possess as a result of a**
30 **conviction for a felony.**

31 (b) **A** [IN CIRCUMSTANCES DESCRIBED IN (a)(1) - (a)(3) OF THIS

SECTION, THE] person **who is not justified in using force in self-defense in the circumstances listed in (a)(1) - (3) of this section is justified in using** [CLAIMING THE DEFENSE OF JUSTIFICATION MAY USE NONDEADLY] force **in self-defense** if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force.

* **Sec. 3.** AS 11.81.335 is amended to read:

Sec. 11.81.335. Justification: Use of deadly force in defense of self. (a) Except as provided in (b) of this section, a person **who is justified in using nondeadly force in self-defense under AS 11.81.330** may use deadly force **in self-defense** upon another person when and to the extent

[(1) THE USE OF NONDEADLY FORCE IS JUSTIFIED UNDER AS 11.81.330; AND

(2)] the person reasonably believes the use of deadly force is necessary for **self-defense** [SELF DEFENSE] against death, serious physical injury, kidnapping, sexual assault in the first degree, sexual assault in the second degree, **sexual abuse of a minor in the first degree**, or robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others **being defended**, the person can avoid the necessity of using deadly force by **leaving the area of the encounter** [RETREATING], except there is no duty to **leave the area** [RETREAT] if the person is

(1) on premises

(A) that [WHICH] the person owns or leases;

(B) where the person resides, temporarily or permanently;

or

(C) as a guest or express or implied agent of the owner, lessor, or resident [AND THE PERSON IS NOT THE INITIAL AGGRESSOR]; [OR]

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380;

1 **(3) in a building where the person works in the ordinary course of**
 2 **the person's employment; or**

3 **(4) protecting a child or a member of the person's household.**

4 * **Sec. 4.** AS 11.81.340 is amended to read:

5 **Sec. 11.81.340. Justification: Use of force in defense of a third person.** A
 6 person **is justified in using** [MAY USE] force upon another when and to the extent
 7 the person reasonably believes it is necessary to defend a third person when, under the
 8 circumstances as the person claiming **defense of another** [THE DEFENSE OF
 9 JUSTIFICATION] reasonably believes them to be, the third person would be justified
 10 under AS 11.81.330 or 11.81.335 in using that degree of force for **self-defense** [SELF
 11 DEFENSE].

12 * **Sec. 5.** AS 11.81.350(c) is amended to read:

13 (c) A person in possession or control of any premises, or **a guest or** an express
 14 or implied agent of that person, may use

15 (1) nondeadly force upon another when and to the extent the person
 16 reasonably believes it is necessary to terminate what the person reasonably believes to
 17 be the commission or attempted commission by the other of criminal trespass in any
 18 degree upon the premises;

19 (2) deadly force upon another when and to the extent the person
 20 reasonably believes it is necessary to terminate what the person reasonably believes to
 21 be a burglary in any degree occurring in an occupied dwelling or building.

22 * **Sec. 6.** AS 11.81.350 is amended by adding new subsections to read:

23 (e) A person

24 (1) in a vehicle, or forcibly removed from a vehicle, may use deadly
 25 force upon another when and to the extent the person reasonably believes it is
 26 necessary to terminate what the person reasonably believes to be a carjacking of that
 27 vehicle;

28 (2) outside of a vehicle may use deadly force upon another when and
 29 to the extent the person reasonably believes it is necessary to terminate what the
 30 person reasonably believes to be the theft of that vehicle when another person, other
 31 than the perceived offender, is inside of the vehicle.

1 (f) A person justified in using force under this section does not have a duty to
2 leave or attempt to leave the area of the encounter before using force.

3 (g) In (e) of this section, "carjacking" means a robbery involving the taking or
4 attempted taking of a vehicle from a person in possession of the vehicle; "vehicle"
5 means a "motor vehicle" as defined in AS 28.40.100, an aircraft, or a watercraft.

6 * **Sec. 7.** AS 11.81.350(d) is repealed.