

**SENATE BILL NO. 201**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

**BY SENATOR DYSON**

**Introduced: 5/10/05**  
**Referred: Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to justifications, presumptions, and liability for use of defensive force."**

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 defensive force as permitted in AS 11.81.325 is immune from civil liability for the use  
6 of force as permitted by that section unless the person against whom force was used  
7 was a peace officer who was engaged in the performance of official duties and the  
8 officer identified the officer in accordance with any applicable law or the person using  
9 force knew or reasonably should have known that the person was a peace officer.

10 (b) The court shall award reasonable attorney fees, court costs, compensation  
11 for loss of income, and all expenses incurred by the defendant in defense of any civil  
12 action brought by a plaintiff if the court finds that the defendant is immune from  
13 liability under (a) of this section.

14 \* **Sec. 2.** AS 11.81 is amended by adding a new section to read:

15 **Sec. 11.81.325. Justification and presumption: use of defensive force.** (a)

1 Notwithstanding another provision of law, a person is presumed to have a reasonable  
 2 belief of fear of imminent threat of death or serious physical injury to the person or  
 3 another person when the person is using deadly force or nondeadly force in defense of  
 4 the person or another person if

5 (1) the person against whom the defensive force was used

6 (A) was in the process of unlawfully and forcefully entering, or  
 7 had unlawfully and forcibly entered, a dwelling, residence, or occupied  
 8 vehicle; or

9 (B) had removed or was attempting to remove another person  
 10 against that person's will from the dwelling, residence, or occupied vehicle;  
 11 and

12 (2) the person using the defensive force knew or had reason to believe  
 13 that an unlawful and forcible entry or unlawful and forcible act was occurring or had  
 14 occurred.

15 (b) The presumption set out in (1) of this section does not apply if

16 (1) the person against whom the defensive force is used has the right to  
 17 be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner,  
 18 lessee, or titleholder, and there is not a domestic violence or stalking protective order  
 19 against the person preventing the person from approaching or being at the dwelling,  
 20 residence, or vehicle;

21 (2) the person sought to be removed is a child or grandchild, or is  
 22 otherwise in the lawful custody or under the lawful guardianship of, the person against  
 23 whom the defensive force is used;

24 (3) the person who uses defensive force is engaged in an unlawful  
 25 activity or is using the dwelling, residence, or occupied vehicle to further an unlawful  
 26 activity; or

27 (4) the person against whom the defensive force is used is a peace  
 28 officer who enters or attempts to enter a dwelling, residence, or vehicle in the  
 29 performance of official duties and the officer identified the officer in accordance with  
 30 any applicable law or the person using force knew or reasonably should have known  
 31 that the person entering or attempting to enter was a peace officer.

1 (C) Notwithstanding another provision of law, a person who is  
2 not engaged in an unlawful activity and who is attacked in any place where the  
3 person has a right to be does not have a duty to retreat and has the right to  
4 stand the person's ground and meet force with force, including deadly force, if  
5 the person reasonably believes it is necessary to do so to prevent death or  
6 serious physical injury to the person or another person or to prevent the  
7 commission of a felony involving the use or threatened use of force.

8 (c) A person who unlawfully and by force enters or attempts to enter a  
9 person's dwelling, residence, or occupied vehicle is presumed to be doing so with the  
10 intent to commit an unlawful act involving force or violence.

11 (d) A person who uses defensive force as permitted in this section is immune  
12 from criminal prosecution for the use of force as permitted by this section unless the  
13 person against whom force was used was a peace officer who was engaged in the  
14 performance of official duties and the officer identified the officer in accordance with  
15 any applicable law or the person using force knew or reasonably should have known  
16 that the person was a peace officer. A law enforcement agency may use standard  
17 procedures for investigating the use of force as described in this section, but the  
18 agency may not arrest a person for using defensive force unless the law enforcement  
19 agency determines that there is probable cause that the force that was used was  
20 unlawful. As used in this subsection, the term "criminal prosecution" includes  
21 arresting, detaining in custody, and charging or prosecuting the defendant.

22 (e) In this section,

23 (1) "residence" means a dwelling in which a person resides either  
24 temporarily or permanently or is visiting as an invited guest;

25 (2) "vehicle" has the meaning given in AS 28.40.100.