

HB

381

SENATE COMMITTEE REPORT

DATE: 4/13/10

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 381(JUD)

HB 381 SELF DEFENSE

"An Act relating to self defense in any place where a person has a right to be."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____



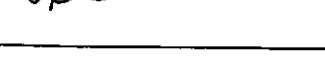

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LAW			✓		3
DPS				✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wielechowski			✓	
	EGAN			✓	
	Wilson	✓			
CHAIR: 	Frenier			✓	

HB381

- ✓ 1. Rescind action in reporting the bill out of committee with the SCS.
OK
2. Rescind action in adopting conceptual amendment
OK
3. Move CS for HB381 (JUD) [the bill that came to us] out of committee w/individual recs and attached.
OK

HB36:

1. Adopt SCS for HB36 (backslash "T") .
2. Move out with individual recs and attached fiscal notes.

AMENDMENT

OFFERED IN THE SENATE
TO: CSHB 381(JUD)

1 Page 2, line 3:

2 Delete all material and insert:

3 "(5) in any other place where the person has a right to be and the
4 person reasonably believes that the danger of harm under (a)(1) - (7) of this
5 section is imminent and can only be avoided by the use of deadly force."

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



Pages (including cover sheet): 1

Date: April 16, 2010

To: Jerry Luckhaupt
From: Cindy Smith

RE: Amendment to HB381

Please draft the following amendment to HB381:

Add at the end of (5):

Provided, that such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat only if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



Pages (including cover sheet): 1

Date: April 16, 2010

To: Jerry Luckhaupt
From: Cindy Smith

RE: Amendment to HB381

Please draft the following amendment to HB381:

Add at the end of (5):

- 1 **Provided that such person may use deadly force against an intruder or attacker in a**
- 2 **place that is not his or her residence without a duty to retreat only if the person**
- 3 **reasonably believes that he or she or another is in imminent danger of death or**
- 4 **serious bodily harm from which he or she or another can only be saved by the use of**
- 5 **deadly force against the intruder or attacker.**

Amendment
1
adopted

HB 381

Suggestions for rewriting the last sentence

The bill would add a section to AS 11.81.335(b), which provides that a person has no duty to retreat if the person is:

(5) "in any place that the person has a right to be"

Could add the language below to following the word "be" at the end of (5):

① provided, that such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat only if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

OR

② provided that such person may no use force unless the person has first asked the attacker to desist and has given verbal warning before using deadly force.

OR

Don't add (5), but add a section which reads

③ (c) In a prosecution in which a person used deadly force without retreating under circumstances other than those described in (b)(1) -(4), it is an affirmative defense that the person was in a place that the person had a right to be and was otherwise justified in using deadly force.

(d) Where a person raises an affirmative defense under (c) the jury may consider whether the failure to retreat was reasonable under the circumstances.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL,
GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

April 15, 2010

The Honorable Hollis French
Alaska State Legislature
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, AK 99801

Re: HB 381 – Self-Defense

Dear Senator French:

Attached please find copies of the pattern jury instruction which is given in cases involving use of deadly force in defense of self or others. Since the instruction refers to the use of non-deadly force, I have also attached that instruction.

I wish to take this opportunity to clarify an earlier document which was sent to your committee. We had forwarded a letter from Assistant Attorney General John Skidmore to your committee. Mr. Skidmore's letter referenced an earlier version of HB 381. It is no longer relevant as to the portions of the bill which have been changed, and is pertinent only to the issues which remain regarding the duty to retreat. I apologize for any confusion this may have caused.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:



Susan McLean
Division Director

cc: Senate Judiciary Committee Members
Representative Mark Neuman

The law of self defense regarding the use of deadly force is as follows:

A defendant may use deadly force upon another person when and to the extent the use of non-deadly force in self defense is justified, and the defendant reasonably believes the deadly force is necessary for self defense against [death] [serious physical injury] [kidnapping] [sexual assault in the first degree] [sexual assault in the second degree] [robbery in any degree]. [However, a defendant may not use deadly force in self defense if the defendant knows that, with complete personal safety and with complete safety as to others, the defendant can avoid the necessity of using deadly force by retreating. [This “duty to retreat” does not apply if the defendant is [on premises which the defendant owns or leases, and the defendant is not the initial aggressor] [a peace officer acting within the scope and authority of the officer’s employment] [assisting someone whom the defendant reasonably believes is a peace officer in making an arrest or terminating or preventing an escape].]]

Unless the state has proven beyond a reasonable doubt that the defendant did not act in self defense, you shall find the defendant not guilty.

USE NOTE

This instruction must be given together with instruction 11.81.330 (use of nondeadly force in self defense).

The following terms are defined in other instructions:

- “deadly force” - 11.81.900(b)
- “force” - 11.81.900(b)
- “leased” - 11.81.900(b)
- “nondeadly force” - 11.81.900(b)
- “peace officer” - 11.81.900(b)
- “physical injury” - 11.81.900(b)
- “premises” - 11.81.900(b)
- “serious physical injury” - 11.81.900(b)

The decision about whether to instruct the jury on self defense belongs to the trial judge. The defendant bears the burden of producing some evidence in support of a claim of self defense before the court must give the instruction. The court need not give an instruction if the only basis for a self defense claim is speculation. Hamilton v. State, 59 P. 3d 760 (Alaska App. 2002). The “some evidence” burden, however, is not a heavy one, and is satisfied when the evidence, viewed in the light most favorable to the defendant, might arguably lead a juror to entertain a reasonable doubt as to the defendant’s guilt. Paul v. State, 655 P.2d 772, 775 (Alaska App. 1982). Even a weak or implausible self defense claim is a question for the jury, and the trial judge should not evaluate the credibility, strength, or weight of evidence in determining whether the burden has been met. Folger v. State, 648 P.2d 111, 113 (Alaska App. 1982); Paul v. State, 655 P.2d at 776. “Some evidence” may consist, for example, solely of the uncorroborated testimony of the defendant. Brown v. State, 698 P.2d 671, 674 (Alaska App. 1985). But the defendant need not testify so long as there is other evidence of self defense. Blackhurst v. State, 721 P.2d 645 (Alaska App. 1986).

In determining whether there is some evidence of self defense, the court must examine every element of the justification, depending upon the particular facts of the case. For example, the court must evaluate whether there is some evidence that (1) the defendant actually believed the use of nondeadly force was necessary, and (2) a reasonable person would have held such a belief under the same circumstances. Weston v. State, 682 P.2d 1119, 1121 (Alaska, 1984). Similarly, it may be necessary in a particular case to determine whether there is some

evidence that the defendant was not an initial aggressor. Brown v. State, 698 P.2d 671, 673-74 (Alaska App. 1985).

The definition of "force" in AS 11.81.900(b) includes actual bodily impact, restraint, or confinement, as well as the threat of imminent bodily impact, restraint, or confinement. Thus, self defense may apply where a defendant reasonably perceived a threat of harm, so long as the perceived harm was imminent. Ha v. State, 892 P.2d 184, 194 (Alaska App. 1995).

The reasonableness of a defendant's beliefs must be evaluated by the jury based on the circumstances of the situation facing the defendant, including any relevant knowledge the defendant had about the other person; physical attributes of all persons involved (including the defendant); and any prior experiences that could provide a reasonable basis for the defendant's beliefs. Ha v. State, 892 P.2d 184, 194-95 (Alaska App. 1995). Reasonable belief means that a reasonable person would have held such a belief under the same circumstances. Weston v. State, 682 P.2d 1119, 1121 (Alaska 1984). A defendant's distorted perceptions due to mental illness, however, may not be a factor in evaluating the reasonableness of the defendant's beliefs. Ha v. State, 892 at 195-96.

This pattern instruction may require slight modification when a defendant claims that an act of self defense was prompted by the danger posed by a group of attackers, and not just the danger posed by the alleged victim named in the charging document. Under such circumstances, the defendant is entitled to have the jury assess the defendant's actions in light of the total danger posed (or apparently posed) by the group. Allen v. State, 51 P.3d 949, 958-59 (Alaska App. 2002).

The law of self-defense regarding the use of nondeadly force is as follows:

A defendant may use nondeadly force upon another when and to the extent the defendant believes it is necessary for self-defense against what the defendant believes to be the use of unlawful force by the other person. The defendant's beliefs must be reasonable under the circumstances.

However, a defendant may not use nondeadly force in self-defense if

- (1) the defendant used the force in mutual combat not authorized by law; or
- (2) the defendant provoked the other's conduct with intent to cause physical injury to the other; or
- (3) the defendant was the initial aggressor; or
- (4) the force used was the result of using a deadly weapon or dangerous instrument the defendant possessed while [acting alone or with others to further a felony criminal objective of the defendant or one or more other defendants] [a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or violation of AS 11.71] [acting alone or with others in revenge for, retaliation for, or response to actual or perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, if the defendant,

or the group on whose behalf the defendant is acting, has a history or reputation for violence among civilians.]

In any of these circumstances, the defendant may use nondeadly force if the defendant has withdrawn from the encounter and effectively communicated the withdrawal to the other person and the other person persists in continuing the incident by the use of unlawful force.

Unless the state has proven beyond a reasonable doubt that the defendant did not act in self-defense, you shall find the defendant not guilty.

USE NOTE

The following terms are defined in other instructions:

“deadly force” - 11.81.900(b)

“force” - 11.81.900(b)

“nondeadly force” - 11.81.900(b)

In circumstances where the exceptions set forth in the third paragraph are not applicable, those portions may be deleted.

The decision whether to instruct the jury on self-defense belongs to the trial judge. The defendant bears the burden of producing some evidence in support of a claim of self-defense before the court must

give the instruction. The court need not give an instruction if the only basis for a self-defense claim is speculation. Hamilton v. State, 59 P.3d 760 (Alaska App. 2002). The “some evidence” burden, however, is not a heavy one, and is satisfied when the evidence, viewed in the light most favorable to the defendant, might arguably lead a juror to entertain a reasonable doubt as to the defendant’s guilt. Paul v. State, 655 P.2d 772, 775 (Alaska App. 1982). Even a weak or implausible self-defense claim is a question for the jury, and the trial judge should not evaluate the credibility, strength, or weight of evidence in determining whether the burden has been met. Folger v. State, 648 P.2d 111, 113 (Alaska App. 1982); Paul v. State, 655 P.2d at 776. “Some evidence” may consist, for example, solely of the uncorroborated testimony of the defendant. Brown v. State, 698 P.2d 671, 674 (Alaska App. 1985). But the defendant need not testify so long as there is other evidence of self-defense. Blackhurst v. State, 721 P.2d 645 (Alaska App. 1986).

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including any relevant knowledge the defendant had about the other person; physical attributes of all persons involved (including the defendant); and any prior experiences that could provide a reasonable basis for the defendant's beliefs. Ha v. State, 892 P.2d 184, 194-95 (Alaska App. 1995). A defendant's distorted perceptions due to mental illness, however, may not be a factor in evaluating the reasonableness of the defendant's beliefs. Id. at 195-96.

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STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL,
GOVERNOR

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

April 14, 2010

Hon. Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman French:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will *encourage* unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say “thou shall not kill,” simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred –this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if “with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area” then the person must do so. This avoids the *unnecessary* loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized *by law* to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill’s sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examining the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is “in a vehicle” owned, leased, used, or even just occupied with the owner’s consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joc Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off -- which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men -- not in gangs, but still rivals -- who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is “in any place where the person has a right to be.” That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self- defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective tests means the “reasonable person” would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law *non*-deadly force may be used to protect property, and deadly force is *only* authorized when terminating an arson or attempted arson on a dwelling or occupied building (See AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. See AS 11.81.350(c)).

Hon. Hollis French, Chair
Re: House Bill 381

April 14, 2010
Page 4

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize *any* person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or *had committed* a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" *had* – past tense – had committed a burglary. This new section says such force *is* reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who *had* -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

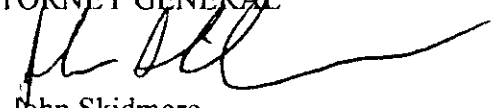
Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:


John Skidmore
Assistant Attorney General

Hon. Hollis French, Chair
Re: House Bill 381

April 14, 2010
Page 5

DSS:JS:vr

cc: Senate Judiciary Committee Members

LIO Mat-Su

From: Clarence Everingham [klink22hank@mtaonline.net]
Sent: Wednesday, April 14, 2010 3:51 PM
To: LIO Mat-Su
Subject: HB381

Senate Judiciary Committee Members and Senator Menard,

Support of HB381 is important to me so that self defense measures for myself and my family will be strengthened, no matter where I am. The ability to protect myself should not be questioned, because of my location. Terrible life threatening situations occur everywhere, not only in the home. Please support this Bill and fortify my ability for self protection, thus continuing to preserve the original content of the founders of the second amendment.

Thank you for considering my opinion,

Clarence Everingham
5001 Hovey drive
Wasilla, Alaska 99654
907-373-5188

ALASKA STATE LEGISLATURE

Co-Chair:
House Committee on Natural Resources

Vice Chair
House Committee on Labor and Commerce

Member:
House Committee on Rules, House Special
Committee on Economic Development, Trade,
and Tourism, and Legislative Budget & Audit
Committee



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-2679
Fax: (907) 465-4822
Toll Free (800) 505-2678

Interim:
600 E. Railroad Ave
Wasilla, AK 99654
Phone: (907) 376-2679
Fax: (907) 376-4745

REPRESENTATIVE MARK NEUMAN

Rep.Mark.Neuman@legis.state.ak.us

Sponsor Statement

CSHB 381 (JUD) SELF DEFENSE

The House Judiciary CS for HB 381 recognizes that Alaskan residents have right to use deadly force to protect their families, persons and property whether they are at home, work, or in any place they have a right to be present. It does this by expanding your right to stand your ground to where they have a right to be.

By expanding the rights of Alaskans to stand their ground to any place they are legally present we tell our residents that their decision to use deadly force to defend themselves and their families will not be second judged, and makes it clear that it is *criminals* who have a duty to retreat.

I believe that HB 381 strengthens the legal recognition of the basic human right of self defense and ask for your support.

26-LS1534S

ALASKA STATE LEGISLATURE

Co-Chair:
House Committee on Natural Resources

Vice Chair
House Committee on Labor and Commerce

Member:
House Committee on Rules, House Special
Committee on Economic Development, Trade,
and Tourism, and Legislative Budget & Audit
Committee



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-2679
Fax: (907) 465-4822
Toll Free (800) 505-2678

Interim:
600 E. Railroad Ave
Wasilla, AK 99654
Phone: (907) 376-2679
Fax: (907) 376-4745

REPRESENTATIVE MARK NEUMAN

Rep.Mark.Neuman@legis.state.ak.us

Summary of Changes

CH for HB 381 (JUD) Self Defense

The current form of HB 381 has a narrowed focus that only addresses the requirement to retreat when threatened with specific crimes.

The Judiciary CS removed all sections except for two lines that stated there was no duty to leave the area of a threat if a person had a right to be there.

This change was made to make the bill narrow in its effect and scope allowing for adequate discussion during the remaining legislative session.

Specific changes to the original bill text are as follows:

Page 2, lines 3-4, deleted.

Section 2, deleted.

Section 1, subsection 6, renumbered as section 1, subsection 5.

For version 26-LS1534\S

Utah Code

Title 76 Utah Criminal Code

Chapter 2 Principles of Criminal Responsibility

Section 402 Force in defense of person -- Forcible felony defined.

76-2-402. Force in defense of person -- Forcible felony defined.

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
916/446-2455 PHONE • 916/448-7469 FAX

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

April 5, 2010

TO: Representative Mark Neuman
CC: Members of the House Finance Committee
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: House Bill 381 – **SUPPORT**

I am writing on behalf of the National Rifle Association – Institute for Legislative Action to express **support for House Bill 381**. HB 381 is important self-defense legislation that would provide that a law-abiding person has “no duty to retreat” from an attack if the person is in any place the person has a legal right to be.

Existing Alaska law already provides that there is no duty to retreat if the person is on premises which the person owns or leases, where he or she resides or in a building where the person works. In any other place, however, if a person “knows” that he or she can safely retreat from an encounter, the person is legally required to do so.

Notwithstanding the question of retreat, a person using deadly force in self-defense must have justification and must consider that question in the split second she has to decide whether to respond with force. Removing the additional question as to whether or not the person can retreat with complete safety provides for one less thing a potential victim must concern herself with in the life-or-death split-second decision-making process. Removing the duty to retreat does not in any way change the fact that a person must be justified in using deadly force and must be lawfully in the place where the act of self-defense takes place.

The basic principle still remains that a person, in self-defense, may only use deadly force upon another person when and to the extent the person *reasonably* believes the use of deadly force is *necessary* for self-defense against death, serious physical injury, kidnapping, sexual assault or robbery. AS 11.81.335(a).

Under current law, a person who resists an aggressor bears the risk of a finding that, although the response was proportional to the reasonably-perceived threat, the person overestimated the difficulty of getting away unscathed and was therefore not justified in reacting with defensive force. Removing the retreat provision shifts some of the risk calculation back to the aggressor.

The opposition to HB 381 has suggested that the bill would encourage the needless taking of human life and violates the concept that life is sacred. Sanctity-of-life issues are somewhat less compelling, however, in circumstances in which the person whose life was taken was behaving in such a way that the person who took his life *reasonably* feared being raped or killed. A rapist isn't deterred by rape laws; but the hesitation of his law-abiding victim to employ defensive force while she still has the chance (but while she considers retreat capability) may mean the difference for *her* between life and death. The sanctity-of-life issue cuts both ways.

Victims should have the protection of law...not criminals! Law-abiding citizens should not fear criminal prosecution when they stand their ground and defend themselves without retreating from any place they have a legal right to be.

Please support House Bill 381!

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL,
GOVERNOR

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

March 15, 2010

Hon. Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman Ramras:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will *encourage* unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say “thou shall not kill,” simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred – this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if “with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area” then the person must do so. This avoids the *unnecessary* loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized *by law* to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill’s sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examining the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is “in a vehicle” owned, leased, used, or even just occupied with the owner’s consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joe Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off -- which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men -- not in gangs, but still rivals -- who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is “in any place where the person has a right to be.” That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self-defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective test means the “reasonable person” would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law *non*-deadly force may be used to protect property, and deadly force is *only* authorized when terminating an arson or attempted arson on a dwelling or occupied building (See AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. See AS 11.81.350(c).

Hon. Jay Ramras, Chair
Re: House Bill 381

March 15, 2010
Page 4

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize *any* person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or *had committed* a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" *had* - past tense - had committed a burglary. This new section says such force *is* reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who *had* -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:


John Skidmore

Assistant Attorney General

Hon. Jay Ramras, Chair
Re: House Bill 381

March 15, 2010
Page 5

DSS:JS: sf

cc: House Judiciary Committee Members



Alaska State Legislature

Please enter into the record my testimony to the FINANCE
 Committee name
 Committee on HB 381 , dated 29 MAR 2010
 Bill/Subject

I Fully support This bill.
 NO American should be required by LAW
 TO retreat FROM AN Aggressor. ANYONE
 WHO THINKS OTHERWISE IS A TRAITOR, AND A
 Coward. AS FOR THE Poppycock issued
 by THE DEPT. OF LAW, WHO THEY CLAIM INCREASED
 COSTS, MORE TRIALS, AND NEEDING MORE LAWYERS,
 MAYBE THEY SHOULD QUIT WASTING TIME
 + \$ ON PLEN-DEALS, AND JUST do THEIR
 JOBS? WERE IT UP TO me, THEY WOULD
 HAVE LESS LAWYERS, STARTING WITH ANNIE
 CARPENTER.

Signed: Russell K Butts 1SG. ARMOR, Retired
 Testifier

Representing (Optional)
BX 892642 WASILLA 99687
 Address
326 3558
 Phone number

From: Beth Schneider
Sent: Tuesday, March 16, 2010 10:59 AM
To: Rep. Mark Neuman; Jim Ellis
Subject: HB 381 Self Defense POM

Gregory Prothero of Wasilla (13) wrote the following message On 3/16/2010 at 08:23 In support of *HB 381 SELF DEFENSE*

Message:


HB381 is a great idea. Keep after it! It's something that the law abiding citizenry needs.

Contact Info:

Gregory Prothero
4501 N Cedarwood Dr
Wasilla 99654
Email:gjinak@mtaonline.net
day:373-6520

~ \., >(((o> ~ \., >(((o> ~ \., >(((o>

Confidentiality Note: This e-mail is intended only for the person or entity to whom it is addressed, and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination, distribution, or copying of this e-mail or the information herein by anyone other than the intended recipient is prohibited. If you have received this e-mail in error, please notify the sender by reply e-mail and destroy the original message and all copies.

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From: Beth Schneider
Sent: Wednesday, March 17, 2010 2:00 PM
To: Jim Ellis
Subject: HB 381


+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to stewart@nopeople.com If suspected Spam please forward to:
support@housemajority.org
+-----+

From: stewart@nopeople.com

Hello Representative Neuman,
Keep up the good work on this bill - Alaskans need this! I hope you can keep the teeth in the
next version you submit. Please don't let it get watered down so much that it can't help
protect someone that ends up in a situation like Phillip Mielke.

Thank you, Stewart Amgwert

~ Stewart Amgwert
Zip Code: 99645

 please don't print this e-mail unless necessary

From: stureder [stureder@mtaonline.net]
Sent: Tuesday, March 30, 2010 9:59 PM
To: Rep. Mark Neuman
Subject: Re: Neuman's e-news brief
Attachments: image001.gif

Mark,

Thank you for the "no need to retreat" gun legislation. Please keep me informed how it ends up.

Stu Reder

----- Original Message -----

From: Rep. Mark Neuman
To: undisclosed-recipients:
Sent: Tuesday, March 30, 2010 2:07 PM
Subject: Neuman's e-news brief

Get Your PFD Applications In!

DEADLINE IS MARCH 31st!

Apply online at <http://www.pfd.state.ak.us/index.aspx>

If you have a friend or neighbor that does not have a computer and hasn't completed and already mailed a paper application, please remind or assist them to file on-line today. The ladies at the Mat-Su LIO (in Wasilla) have computers available and are available to assist you. Call them at 376-3704 if you need more information.

CAPITAL BUDGET

It's been a busy few weeks here in Juneau, but soon, SB 230, the Capital Budget bill, will be heard. The first scheduled hearing is on April 1st at 9 AM in Senate Finance. After hearings in Senate Finance it will pass to the Senate Floor for a vote before it comes to the House for consideration.

FY10 SUPPLEMENTAL BUDGET

The Alaska State House unanimously passed House Bill 326, the Fiscal Year 2010 supplemental budget authorizing operating appropriations and fund transfers. The bill appropriates a total of \$1,682.6 billion dollars, of which \$1,520.5 billion is in fund transfers, \$5.0 million for fund capitalization, and \$157.1 million for agency operations.

HB 326 authorizes two significant fund transfers: \$1.1 billion to forward-fund K-12 education for Fiscal Year 2011 and \$401 million to fully repay past borrowings from the Constitutional Budget Reserve Fund, or CBR. The fund transfer to the CBR is a significant accomplishment representing a concerted effort by legislators over the past three years of high oil prices to repay the debt owed to the state's savings account.

From: housemajority_email@housemajority.org
Sent: Wednesday, March 31, 2010 6:43 AM
To: Rep. Mark Neuman
Subject: Your Gun Bill

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to akleatherneck@mtaonline.net If suspected Spam please forward
to: support@housemajority.org
+-----+

From: akleatherneck@mtaonline.net

Rep. Neuman

I want to take a moment and thank you for responding to my previous email pertaining to
Alaskans' Right to self defense. This morning I heard on AM700 that you have written a bill
to change the requirements for the use of deadly force within our state. If I understand
correctly your bill would eliminate the requirment to flee the area. If this description is
accurate, I support you and this Legislation completly. How can I find out more info on this
Legislation and spread the word to my fellow Alaskans?

Thank you for standing on RIGHT, and speaking out against WRONG. Has Carl Gatto come out to
support this legislation?


Respectfully

Ryan J Clark USMC Vt

~ Ryan J Clark USMC Vt

Zip Code: 99645

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to akleatherneck@mtaonline.net If suspected Spam please forward
to: support@housemajority.org
+-----+




From: Paul Brown [pkbrown@alaska.edu]
Sent: Wednesday, March 31, 2010 1:36 PM
To: Rep. Mark Neuman
Subject: HR381

I am in support of HR 381

thanks

paul brown


From: RICHARD ELMQUIST [sportec@mtaonline.net]
Sent: Wednesday, March 31, 2010 1:54 PM
To: Rep. Mark Neuman
Subject: HB381

THANKS MARK, I'M ALL FOR IT! WHAT CAN WE DO SO IT WILL GET PASSED? LIVE IN MEADOW LAKES BUT HAVE A HOUSTON ADDRESS.

From: Kim Skipper
Sent: Wednesday, March 31, 2010 4:35 PM
To: Rep. Mark Neuman
Subject: FW: Support of House Bill 381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: rguising@mtaonline.net [mailto:rguising@mtaonline.net]
Sent: Wednesday, March 31, 2010 1:45 PM
To: Rep. Anna Fairclough
Subject: Support of House Bill 381


Anna, as a constituent in your district I urge you to support House Bill 381, as well as any additional rights guaranteed by the second amendment.

Thank you.

Robert Guisinger
Eagle River, Alaska
(907) 622-1228

House Bill 381, an important self-defense reform measure, is currently on the move in Juneau.

Simply stated, HB381, introduced by State Representative Mark Neuman (R-15), would remove the duty to retreat in Alaska. Under this bill, Alaskans would have the right to use force, including deadly force, for self-defense anywhere they have a right to be.



From: Rep. Anna Fairclough
Sent: Wednesday, March 31, 2010 4:36 PM
To: Rep. Mark Neuman
Subject: FW: HB381

Rep. Neuman,


Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: Jeff Rukes [mailto:jrukes@gmail.com]
Sent: Wednesday, March 31, 2010 1:42 PM
To: Rep. Anna Fairclough
Subject: HB381

I am e-mailing you in support of HB381. Self defense in an inalienable right and I do not feel that an individual should be required by law to retreat. This is common sense.

Thanks


From: Rep. Anna Fairclough
Sent: Wednesday, March 31, 2010 4:38 PM
To: Rep. Mark Neuman
Subject: FW: HB 381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801


From: Alaskan Campbells [mailto:alaskancustoms@gmail.com]
Sent: Wednesday, March 31, 2010 2:26 PM
To: Rep. Anna Fairclough
Subject: HB 381

Rep. Fairclough,

I urge you to support HB 381. Thank you for you support on this issue.

Andrew Campbell
11328 Bridger Pl
Eagle River, AK 99577

Ph. 907-696-4656



From: Mark Greig [greig_mark@hotmail.com]
Sent: Wednesday, March 31, 2010 1:50 PM
To: Rep. Mark Neuman
Subject: HB 381


Dear Representative Neuman,

I am writing to say thank you for introducing HB 381 and expressing my support for the bill.

Best Regards,

Mark greig

Hotmail: Trusted email with powerful SPAM protection. [Sign up now.](#)



From: James Skinner [james36@mtaonline.net]
Sent: Wednesday, March 31, 2010 9:15 PM
To: Rep. Mark Neuman
Subject: HB381

Dear Mark,

I have not been able to get to your town hall meetings to personally voice my concerns. HB381 has come to my attention. I would urge you to support this bill.

As rural Alaskans we are not afforded the same police protection as those in the city. We need to maintain the provisions that HB381 provides us. The legal ability under the law to protect our property and our personal well being.

Thank you for your attention to this matter. Keep me informed.

Sincerely,

James Skinner

From: housemajority_email@housemajority.org
Sent: Wednesday, March 31, 2010 10:22 PM
To: Rep. Mark Neuman
Subject: HB 381


+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'. Then change the TO: address to taurusetursa@yahoo.com If suspected Spam please forward to: support@housemajority.org
+-----+

From: taurusetursa@yahoo.com

Thank you for being the prime sponsor of HB 381. If passed, it may spare law-abiding Alaskans and their families from extreme personal duress and the often debilitating financial costs of defending themselves in criminal and civil proceedings for having protected themselves or their loved ones by the proper and timely application of deadly force. Thank you again for your leadership in sponsoring this important and reasonable legislation.

~ Mick Rosenberg
Zip Code: 99508
Voter ID: 00590359

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'. Then change the TO: address to taurusetursa@yahoo.com If suspected Spam please forward to: support@housemajority.org
+-----+



From: mud flat [mudflat@hotmail.com]
Sent: Wednesday, March 31, 2010 10:26 PM
To: Rep. Alan Austerman; Rep. Nancy Dahlstrom; Rep. Les Gara; Rep. John Harris; Rep. Craig Johnson; Rep. Beth Kerttula; Rep. Kurt Olson; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Reggie Joule; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Mike Chenault; Rep. Bryce Edgmon; Rep. Carl Gatto; Rep. Bob Herron; Rep. Scott Kawasaki; Rep. Charisse Millett; Rep. Jay Ramras; Rep. Chris Tuck; Rep. Sharon Cissna; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Wes Keller; Rep. Cathy Munoz; Rep. Woodie Salmon; Rep. Peggy Wilson; Rep. Harry Crawford; Rep. Neal Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Tammie Wilson
Subject: HB381, introduced by State Representative Mark Neuman

Dear Representative,
I am writing to ask you to support HB 381. I believe this to be an important piece of legislation, and one that is needed in Alaska and the rest of the country.

Yours sincerely,

holas Atkinson

Nic

Address: 3004 W. Northern Lights Blvd. 10C
Anchorage, AK 99517

Hotmail: Trusted email with powerful SPAM protection. [Sign up now.](#)

From: Rep. Anna Fairclough
Sent: Thursday, April 01, 2010 10:38 AM
To: Rep. Mark Neuman
Subject: FW: Bill HB381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: judie@ak.net [mailto:judie@ak.net]
Sent: Thursday, April 01, 2010 10:23 AM
To: Rep. Anna Fairclough
Subject: Bill HB381

Please support passage of bill HB381.

Chuck Link
10918 Sun Eagle Circle
Eagle River

907-696-2068

From: Rep. Anna Fairclough
Sent: Thursday, April 01, 2010 10:34 AM
To: Rep. Mark Neuman
Subject: FW: HB 381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: alaskaneagles@gci.net [mailto:alaskaneagles@gci.net]
Sent: Wednesday, March 31, 2010 10:00 PM
To: Rep. Anna Fairclough
Subject: HB 381

Representative Fairclough:


The primary reason I'm writing it to ask for your support on HB381. I would appreciate your help in getting this passed.

I've been doing my best to keep up with all the happenings in Juneau but can't keep up with everything. I appreciate all your hard work fighting for us back here in Eagle River.

Respectfully,

Stevan W. Cady
17910 Meadow Creek Drive
Eagle River, AK 99577

P.S. I still use my address labels when signing in to our town hall meetings.



From: Jeff Brown [k9abnmp45@hotmail.com]
Sent: Thursday, April 01, 2010 10:08 AM
To: Rep. Mark Neuman; charlie_huggins@legis.state.ak.us; linda_menard@legis.state.ak.us; wes_keller@legis.state.ak.us

Gentleman,

Please support HB381, Thanks

Jeff Brown
907-355-5529

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The New Busy is not the old busy. Search, chat and e-mail from your inbox. [Get started.](#)

From: housemajority_email@housemajority.org
Sent: Thursday, April 01, 2010 8:49 AM
To: Rep. Mark Neuman
Subject: Email to Rep. Neuman

+-----+
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correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to bbcates@hotmail.com If suspected Spam please forward to:
support@housemajority.org
+-----+

From: bbcates@hotmail.com

Thank you so much for HB 381. With all that has been going on in our government in recent
years we need all the laws we can get to protect our right to protect ourselves.

Thank You Again
Brandon Cates

~ Brandon Cates
Zip Code: 99709

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to bbcates@hotmail.com If suspected Spam please forward to:
support@housemajority.org
+-----+

From: housemajority_email@housemajority.org
Sent: Thursday, April 01, 2010 12:13 PM
To: Rep. Mark Neuman
Subject: HB 381

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to huntn101@mtaonline.net If suspected Spam please forward to:
support@housemajority.org
+-----+

From: huntn101@mtaonline.net

Honorable Mark Neuman,
Thank you for sponsoring HB 381 Alaskan Self Defense Reform. Many of us live in places that
are remote from a timely response from law enforcement. My house is 6 miles from Wasilla and
the one time I called Troopers for an emergency it took 25 minutes for them to get here. This
is due to our geographical size in the Valley. It is comforting to know I will be able to
defend myself without retribution if that unfortunate situation ever presents itself. You
and Rep Keller need to keep up the great work. Thanks Again, Julie Gillette

~ Julie A Gillette
Zip Code: 99654

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to huntn101@mtaonline.net If suspected Spam please forward to:
support@housemajority.org
+-----+

From: taurusetursa [taurusetursa@yahoo.com]
Sent: Thursday, April 01, 2010 12:58 PM
To: Rep. Mark Neuman
Subject: Re: HB 381 Support

Mark ~

Thank you for acknowledging my note so promptly, the promising news and, again, your sponsorship of this important bill.

Mick

From: Rep. Mark Neuman <Representative_Mark_Neuman@legis.state.ak.us>
To: "taurusetursa@yahoo.com" <taurusetursa@yahoo.com>
Sent: Thu, April 1, 2010 9:22:22 AM
Subject: RE: HB 381 Support

Mick,

Thank you for your note of support. The legislation is picking up more sponsors as it heads to its next hearing in Finance. I hope that you have contacted your local legislators as well.

Mark

-----Original Message-----

From: housemajority_email@housemajority.org [mailto:housemajority_email@housemajority.org]
Sent: Wednesday, March 31, 2010 10:22 PM
To: Rep. Mark Neuman
Subject: HB 381

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org
To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to taurusetursa@yahoo.com
If suspected Spam please forward to: support@housemajority.org
+-----+

From: taurusetursa@yahoo.com

Thank you for being the prime sponsor of HB 381. If passed, it may spare law-abiding Alaskans and their families from extreme personal duress and the often debilitating financial costs of defending themselves in criminal and civil proceedings for having protected themselves or their loved ones by the proper and timely application of deadly force. Thank you again for your leadership in sponsoring this important and reasonable legislation.

~ Mick Rosenberg
Zip Code: 99508
Voter ID: 00590359

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org
To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to taurusetursa@yahoo.com
If suspected Spam please forward to: support@housemajority.org
+-----+

From: John Lime III [john.limeiii@gmail.com]
Sent: Friday, April 02, 2010 2:06 PM
To: Rep. John Harris; Rep. Alan Austerman; Rep. Nancy Dahlstrom; Rep. Les Gara; Rep. Craig Johnson; Rep. Beth Kerttula; Rep. Kurt Olson; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Chris Tuck; Rep. Reggie Joule; Rep. Jay Ramras; Rep. Charisse Millett; Rep. Scott Kawasaki; Rep. Bob Herron; Rep. Carl Gatto; Rep. Bryce Edgmon; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Mike Chenault; Rep. Peggy Wilson; Rep. Woodie Salmon; Rep. Cathy Munoz; Rep. Sharon Cissna; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Wes Keller; Rep. Harry Crawford; Rep. Neal Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Tammie Wilson
Subject: Crime and Self Defense
Follow Up Flag: Follow up
Flag Status: Flagged

To the Honorable Alaska State Representatives.

I am writing you today to urge you all to pass House Bill 381, Rep Mark Neuman's "*An Act relating to self defense in any place where a person has a right to be.*"

This Bill has personal importance to me as last year (June 10, 2009) I was assaulted by a drug dealer at work. I was getting a plate number off a vehicle being driven by the dealers wife. The dealer jumped out of the moving vehicle and struck me several times in the head and face as I tried to retreat back into the building. The Anchorage Police have been unable to locate this person or the vehicle since. I had to have an operation to repair my partially severed ear and a second operation to remove my eyeball from my sinus cavity and to repair my eye socket. I still have a sensitivity to light and now have to wear corrective lenses that were not needed prior to the attack. I missed 2 months of work, and as the percentage of my base pay that was paid in workmans compensation was minimal, and that I had to pay 2 months of medical, dental and life insurance premiums as soon as I went back to work, my family is still trying to recover financially from this incident.

As the current law requires a person to retreat if possible, I believe that this new legislation would prove to be a great deterrent from future attacks of this sort in our state if passed and signed into law and then publicized to let the criminal elements in our society know that we as citizens will not be victimized anymore.

Please consider the following taken from www.crimemapping.com as provided by the Anchorage Police Department:

For the last week here are the statistics of crimes in the Anchorage bowl area:

4-1-2010: 79 crimes committed. 9 Assaults. 5 Robberies. 12 Disturbances/Disorderly Conduct. 5 Burglaries. 4 Drugs. 4 DUI. 10 Fraud/Forgery. 25 Theft. 2 Vandalism. 2 Vehicle Theft. 1 Weapons Offense.

3-31-2010: 75 crimes committed. 8 Assaults. 3 Disturbances/Disorderly Conduct. 8 Burglaries. 10 Drugs. 6 DUI. 15 Fraud/Forgery. 19 Theft. 4 Vandalism. 2 Vehicle Theft.

3-30-2010: 62 crimes committed. 7 Assaults. 3 Disturbances/Disorderly Conduct. 7 Burglaries. 2 Drugs. 2 DUI. 11 Fraud/Forgery. 24 Theft. 6 Vandalism.

3-29-2010: 74 crimes committed. 4 Assaults. 4 Robberies. 13 Disturbances/Disorderly Conduct. 3 Burglaries. 6 Drugs. 3 DUI. 13 Fraud/Forgery. 2 Vehicle Theft. 24 Theft. 9 Vandalism.


3-28-2010: 63 crimes committed. 14 Assaults. 6 Disturbances/Disorderly Conduct. 3 Burglaries. 3 Drugs. 6 DUI. 4 Fraud/Forgery. 4 Vehicle Theft. 17 Theft. 5 Vandalism. 1 Weapons Offense.

3-27-2010: 93 crimes committed. 15 Assaults. 2 Robberies. 15 Disturbances/Disorderly Conduct. 2 Burglaries. 3 Drugs. 10 DUI. 8 Fraud/Forgery. 3 Vehicle Theft. 27 Theft. 8 Vandalism.

3-26-2010: 68 crimes committed. 8 Assaults. 1 Robberies. 8 Disturbances/Disorderly Conduct. 3 Burglaries. 4 Drugs. 4 DUI. 8 Fraud/Forgery. 4 Vehicle Theft. 19 Theft. 7 Vandalism. 2 Weapoms Offenses.


Thank you all for your representation and help.

Semper Fidelis!
In God We Trust
John F. Lime III
2221 Muldoon Rd, Spc 52
Anchorage, AK 99504-3630
(907) 338-0747
(907) 441-7088
john.limeiii@gmail.com



From: Don & Cristina Smith [doncristina@gmail.com]
Sent: Friday, April 02, 2010 10:25 PM
To: Rep. Mark Neuman
Subject: HB381

Rep Mark Neuman,
Great bill!
Don Smith
POB 427
Willow, Ak.
99688



From: Tabitha and Asher [atdymoke@gmail.com]
Sent: Saturday, April 03, 2010 10:39 AM
To: Rep. Mark Neuman
Subject: Support
Attachments: image001.jpg


Representative Neuman,

Please know my husband and I support HB 381!!!! We live in Wasilla, and we wanted you to know we support you and this bill!!!!

Keep up the good work you are doing!!
Tabitha and Asher Dymoke

From: Tim Hilliard [timh2661@yahoo.com]
Sent: Sunday, April 04, 2010 9:25 AM
To: Sen. Johnny Ellis; Sen. Con Bunde; Sen. Lesil McGuire; Sen. Bert Stedman; Sen. Linda Menard; Sen. Hollis French; Sen. John Coghil; Sen. Bettye Davis; Sen. Lyman Hoffman; Sen. Kevin Meyer; Sen. Joe Thomas; Sen. Fred Dyson; Sen. Charlie Huggins; Sen. Donny Olson; Sen. Tom Wagoner; Sen. Dennis Egan; Sen. Albert Kookesh; Sen. Joe Paskvan; Sen. Bill Wielechowski; Rep. Les Gara; Rep. John Harris; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Reggie Joule; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Bryce Edgmon; Rep. Mike Chenault; Rep. Kyle Johansen; Rep. Beth Kerttula; Rep. Carl Gatto; Rep. Bob Herron; Rep. Scott Kawasaki; Rep. Charisse Millett; Rep. Jay Ramras; Rep. Chris Tuck; Rep. Sharon Cissna; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Wes Keller; Rep. Cathy Munoz; Rep. Woodie Salmon; Rep. Peggy Wilson; Rep. Harry Crawford; Rep. Neal Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Tammie Wilson
Subject: HB381

Please support HB381. The right of law abiding citizens to protect themselves, their families, and their property should never have been called into question. The duty to retreat concept has served no purpose other than to embolden those with criminal or violent intent. Please help restore a fundamental liberty to all law abiding Alaskans by supporting HB381. Thank you



From: Jeff De Broeck [jeffde@mtaonline.net]
Sent: Monday, April 05, 2010 5:40 PM
To: Rep. Mark Neuman
Subject: HB381

Follow Up Flag: Follow up
Flag Status: Flagged

I strongly support your bill. What additional contacts can I make in support of this legislation?


Jeffrey DeBrock
2783 west stable circle
Wasilla ,AK
99654

From: Lucy Groh [cjgroh@alaska.net]
Sent: Monday, April 05, 2010 6:56 PM
To: Rep. Mark Neuman
Subject: HB381

I am writing to support this bill1 I will send you a copy of the response I got from the link forward to me as a place to signal my support. It apparently will not be delivered so I am ensuring that this message will do so!
Lucy W. Groh, Anchorage, Alaska

From: buddg@gci.net on behalf of Budd G [buddg@gci.net]
Sent: Tuesday, April 06, 2010 10:05 AM
To: Rep. Wes Keller; Rep. Carl Gatto; Rep. Mark Neuman; Rep. Reggie Joule
Subject: HP 381 Support Opinion Message

Please support HB 381 and get it passed this Session.
Budd Goodyear
Barrow and the Mat Valley
Voter ID 01115829



From: Kelly Caraway [kellytim@mtaonline.net]
Sent: Saturday, April 03, 2010 12:49 AM
To: Rep. Mark Neuman
Subject: HB381

Thank you for introducing this legislation. We fully support it.

Tim & Kelly Caraway
HC 38 Box 2622
Wasilla AK 99654

Alaska Statutes

Sec. 11.81.330. Justification: Use of nondeadly force in defense of self.

(a) A person is justified in using nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self-defense against what the person reasonably believes to be the use of unlawful force by the other person, unless

(1) the person used the force in mutual combat not authorized by law;

(2) the person claiming self-defense provoked the other's conduct with intent to cause physical injury to the other;

(3) the person claiming self-defense was the initial aggressor; or

(4) the force used was the result of using a deadly weapon or dangerous instrument the person claiming self-defense possessed while

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

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

(C) acting alone or with others in revenge for, retaliation for, or response to actual or perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians.

(b) A 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 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.

AS 11.81.335 – 11.81.350

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 the person reasonably believes the use of deadly force is necessary for self-defense against

(1) death;

(2) serious physical injury;

(3) kidnapping, except for what is described as custodial interference in the first degree in AS 11.41.320;

(4) sexual assault in the first degree;

(5) sexual assault in the second degree;

(6) sexual abuse of a minor in the first degree; or

(7) 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, except there is no duty to leave the area if the person is

(1) on premises

(A) that 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;

(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;

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

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

Sec. 11.81.340. Justification: Use of force in defense of a third person.

A person is justified in using force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming defense of another reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense.

Sec. 11.81.350. Justification: Use of force in defense of property and premises.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

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

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

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

(d) *[Repealed, Sec. 7 ch 68 SLA 2006].*

(e) A person

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

(2) outside of a vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that vehicle when another person, other than the perceived offender, is inside of the vehicle; this paragraph does not apply to a person outside of a vehicle who is involved in a dispute with a person inside of the vehicle who is a household member of that person; in this paragraph, "household member" has the meaning given in AS 18.66.990.

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

(g) In (e) of this section,

(1) "carjacking" means a robbery involving the taking or attempted taking of a vehicle from a person in possession of the vehicle;

(2) "vehicle" means a "motor vehicle" as defined in AS 28.40.100, an aircraft, or a watercraft.

2009 Florida Statutes

Title XLVI CRIMES

Chapter 776 JUSTIFIABLE USE OF FORCE

776.031 Use of force in defense of others.--A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

History.--s. 13, ch. 74-383; s. 1189, ch. 97-102; s. 3, ch. 2005-27.

Utah Code

Title 76 Utah Criminal Code

Chapter 2 Principles of Criminal Responsibility

Section 402 Force in defense of person -- Forcible felony defined.

76-2-402. Force in defense of person -- Forcible felony defined.

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).