

HB

24

<TARGET><BILL>HB 24</BILL><SUBJECT>HB
24</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/28/13

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 24(JUD)

HB 24 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 _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADM			✓	1
ADM			✓	2
LAW			✓	3
DPS			✓	4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Michael J. Bishop</i>	DUNLEAVY	✓			
<i>Cliff Bishop</i>	BISHOP	X			
<i>John Hoffman</i>	HOFFMAN				
<i>Anna Fairclough</i>	FAIRCLOUGH	X			
<i>Andrew Olson</i>	OLSON				
CO-CHAIR: <i>Pete Kelly</i>	KELLY				
CO-CHAIR: <i>K. Meyer</i>	MEYER	✓			

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 24(JUD)
Fiscal Note Number: 1
(H) Publish Date: 2/11/13

Identifier: HB024-DOA-OPA-2-01-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By:	Richard Allen, Director	Phone:	(907)269-3504
Division:	Office of Public Advocacy	Date:	02/01/2013 10:00 PM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	02/01/13
	Department of Administration		

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 24(JUD)

Analysis

This bill amends the statute governing self-defense and eliminates the duty to retreat if the person claiming self-defense is "in any place where the person has a right to be." The question of whether a person has a duty to retreat is closely tied to the question of whether a person is justified in using deadly force.

Eliminating the duty in certain circumstances, therefore, is not likely to have a fiscal impact on the cases charged by the state. Accordingly, the Office of Public Advocacy submits a zero impact fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 24(JUD)
 Fiscal Note Number: 2
 (H) Publish Date: 2/11/13

Identifier: HB024-DOA-PDA-2-01-13
 Title: SELF DEFENSE
 Sponsor: ** NEUMAN, ISAACSON
 Requester: House Judiciary

Department: Department of Administration
 Appropriation: Legal and Advocacy Services
 Allocation: Public Defender Agency
 OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2014 Request	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014						
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: Quinlan Steiner
 Division: Public Defender Agency
 Approved By: Curtis Thayer, Deputy Commissioner
Department of Administration

Phone: (907)334-4414
 Date: 02/01/2013 12:52 PM
 Date: 02/01/13

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 24(JUD)

Analysis

This bill amends the statute governing self-defense and eliminates the duty to retreat if the person claiming self-defense is "in any place where the person has a right to be." The question of whether a person has a duty to retreat is closely tied to the question of whether a person is justified in using deadly force.

Eliminating the duty in certain circumstances, therefore, is not likely to have a fiscal impact on the cases charged by the state. Accordingly, the Agency submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 24(JUD)
Fiscal Note Number: 3
(H) Publish Date: 2/11/13

Identifier: HB024-LAW-CRIM-02-05-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: (H) Judiciary

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2014 Request	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	02/05/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	02/05/13
	Department of Law		

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 24(JUD)

Analysis

House Bill 24 expands the places from which a person need not retreat before using deadly force in self defense to any place the person has a right to be. In all cases where deadly force is used and the person does not retreat, and it is not in their home or workplace, it is more likely the case will go to trial.

The fiscal note is zero because it is anticipated the department will prosecute these cases with existing resources.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 24(JUD)
Fiscal Note Number: 4
(H) Publish Date: 2/11/13

Identifier: HB024-DPS-DET-02-01-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: House Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	<u>Lieutenant Rodney Dial</u>	Phone:	<u>(907)254-1284</u>
Division	<u>Alaska State Troopers</u>	Date:	<u>02/01/2013 10:15 AM</u>
Approved By:	<u>Joseph A. Masters, Commissioner</u>	Date:	<u>02/01/13</u>
	<u>Department of Public Safety</u>		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 24(JUD)

Analysis

This proposed legislation would amend AS 11.81.335 - Justification: Use of deadly force in defense of self - by adding a new paragraph (5) under subsection (b) which provides exceptions to a person's duty to leave the area. The new paragraph (5) provides that there is no duty to retreat if the person is in any place the person has a right to be.

Passage of this bill will have no fiscal impact to the Division of Alaska State Troopers.



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, 2013

TO: Members of the Senate Finance Committee
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: House Bill 24 – **SUPPORT**

I am writing on behalf of the National Rifle Association – Institute for Legislative Action to express **support for House Bill 24**. HB 24 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 secondary 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 primary requirement that a person be *justified in using deadly force* and must be lawfully in the place where the act of self-defense takes place.

Under existing Alaska law, which is NOT changed by this bill, a person is justified in using deadly force upon another person ONLY when 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). Further, current Alaska law provides that a person is specifically NOT justified in using deadly force (or non-deadly force for that matter) in the following circumstances: 1) The person was engaged in mutual combat; 2) The person provoked the other’s conduct; 3) The person was the initial aggressor; and 4) The person was involved in felonious activity or gang activity. AS 11.81.330 (a) (1)-(4).

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 is, therefore, guilty of a crime despite being justified to react with defensive force. Removing the retreat provision shifts some of the risk calculation back to the aggressor.

The opposition to HB 24 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.

Finally, House Bill 24 should save the state money! Again, the bill in no way changes the *primary* requirement that a person using deadly force in self-defense must have justification and in no way changes what constitutes justification. Under the provisions of HB 24, once the prosecution has determined that there was justification, charges should be dropped and their job is done. Prosecutors will have no need to expend additional resources to evaluate the question of retreat.

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 24!

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.

ALASKA STATE LEGISLATURE

Member:

House Finance Committee

Chair:

House Budget Sub Committees on:

- Department of Health & Social Services
- Department of Transportation & Public Facilities



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) 373-4745

Representative Mark Neuman

Rep.Mark.Neuman@akleg.gov

Sponsor Statement

Alaska Statutes already recognize that we have a right to use deadly force to protect our family, person, and property. HB 24 further clarifies that right exists not only in our home but also in any other place that we have a right to be.

This legislation clarifies the individuals' right to stand their ground and not second guess the consequence of protecting their family or self.

HB 24 strengthens the legal recognition of a basic human right to defend oneself, by sending a message to the Judiciary and Law Enforcement that it is the criminal who has the duty to retreat.

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 28.90.990, an aircraft, or a watercraft.

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.