

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB804

Hearing Date: Wednesday January 25, 2012
Committee On: Judiciary
Introducer: Lautenbaugh
One Liner: Change provisions relating to justification for use of force

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Ashford, Coash, Larson, Lathrop, Lautenbaugh, McGill
Nay:		
Absent:	1	Senator Harr
Present Not Voting:	1	Senator Council

Proponents:
SEN. SCOTT LAUTENBAUGH
DANIEL CAREY
ANDREAS ALLEN
ROD MOELLER

Representing:
INTRODUCER
NRA
NEBRASKA FIREARMS OWNERS ASSOCIATION
SELF

Opponents:
DAVID BAKER
AMY PRENDA

Representing:
OMAHA POLICE DEPT.
NEBRASKA COUNTY ATTORNEY'S OFFICE

Neutral:

Representing:

Summary of purpose and/or changes:

LB 804 would amend 28-1406, 28-1407, 28-1412 thru 28-1416 and 29-439 to incorporate the new Section 3 of this act as well as make the following changes:

The new section 3, provides that for purposes of sections 28-1419 to 281411 (Use of Force Statutes) a person's use of force will be presumed to be immediately necessary to protect against death or seriously bodily injury when such force is used against a person who is unlawfully and forcibly entering or has unlawfully and forcibly entered and is present within the actor's dwelling or occupied vehicle. This section is also applicable to prevent the removal or attempted removal of another person from the actor's dwelling or occupied motor vehicle.

The presumption provided in section 3 is not available to the actor, if at the time that the force is used, the person who uses defensive force is engaged in or attempting to escape from a crime or is using the dwelling or occupied motor vehicle to further a crime.

28-1416(2) is amended to provide that if the conduct is justifiable under sections 281406 to 28-1416 and the newly created Section 3 of this act, then this act abolishes any civil remedy available to the person against whom force is used.

Explanation of amendments:

AM2268 would Strike all original sections and inserts the following new sections:

Section 1, would revise 28-1416(2) by striking this subsection, which section provided that even though conduct was justifiable under sections 28-1406 to 28-1416 that finding did not "abolish or impair" any remedy for the conduct under any civil action; and

A new subsection(2) is created to provide that the "justification defense" provided under 28-1406 to 28-1416 shall be available in any civil action for "assault and battery" or "intentional wrongful death" and where applicable shall be a bar to recovery.

Section 2, provides a general repealer to 28-1416.

Brad Ashford, Chairperson