

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 155

Introduced by Hardin, 48; Lippincott, 34; Lonowski, 33; McKeon, 41; von
Gillern, 4.

Read first time January 13, 2025

Committee:

1 A BILL FOR AN ACT relating to justification for the use of force; to
2 amend sections 28-1406, 28-1409, and 28-1410, Reissue Revised
3 Statutes of Nebraska; to define a term; to provide that there is no
4 duty to retreat before using deadly force when lawfully present in a
5 motor vehicle; to harmonize provisions; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 28-1406, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1406 As used in sections 28-1406 to 28-1416, unless the context
4 otherwise requires:

5 (1) Actor means any person who uses force in such a manner as to
6 attempt to invoke the privileges and immunities afforded to the actor by
7 sections 28-1406 to 28-1416, except any duly authorized law enforcement
8 officer of the State of Nebraska or its political subdivisions; Unlawful
9 force shall mean force, including confinement, which is employed without
10 the consent of the person against whom it is directed and the employment
11 of which constitutes an offense or actionable tort or would constitute
12 such offense or tort except for a defense such as the absence of intent,
13 negligence, or mental capacity; duress; youth; or diplomatic status; not
14 amounting to a privilege to use the force;

15 (2) Assent means ~~shall mean~~ consent, whether or not it otherwise is
16 legally effective, except assent to the infliction of death or serious
17 bodily harm;

18 (3) Deadly force means ~~shall mean~~ force which the actor uses with
19 the purpose of causing or which the actor he knows to create a
20 substantial risk of causing death or serious bodily harm. Purposely
21 firing a firearm in the direction of another person or at a vehicle in
22 which another person is believed to be constitutes deadly force. A threat
23 to cause death or serious bodily harm, by the production of a weapon or
24 otherwise, so long as the actor's purpose is limited to creating an
25 apprehension that the actor he will use deadly force if necessary, shall
26 not constitute deadly force;

27 ~~(4) Actor shall mean any person who uses force in such a manner as~~
28 ~~to attempt to invoke the privileges and immunities afforded him by~~
29 ~~sections 28-1406 to 28-1416, except any duly authorized law enforcement~~
30 ~~officer of the State of Nebraska or its political subdivisions;~~

31 (4) ~~(5)~~ Dwelling means ~~shall mean~~ any building or structure, though

1 movable or temporary, or a portion thereof, which is for the time being
2 the actor's home or place of lodging; and

3 (5) Motor vehicle has the same meaning as in section 28-109;

4 (6) Public officer means ~~shall mean~~ any elected or appointed officer
5 or employee of the State of Nebraska or its political subdivisions,
6 except any duly authorized law enforcement officer of the State of
7 Nebraska or its political subdivisions; and -

8 (7) Unlawful force means force, including confinement, which is
9 employed without the consent of the person against whom it is directed
10 and the employment of which constitutes an offense or actionable tort or
11 would constitute such offense or tort except for a defense such as the
12 absence of intent, negligence, or mental capacity; duress; youth; or
13 diplomatic status; not amounting to a privilege to use the force.

14 **Sec. 2.** Section 28-1409, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 28-1409 (1) Subject to the provisions of this section and of section
17 28-1414, the use of force upon or toward another person is justifiable
18 when the actor believes that such force is immediately necessary for the
19 purpose of protecting the actor ~~himself~~ against the use of unlawful force
20 by such other person on the present occasion.

21 (2) The use of such force is not justifiable under this section to
22 resist an arrest which the actor knows is being made by a peace officer,
23 although the arrest is unlawful.

24 (3) The use of such force is not justifiable under this section to
25 resist force used by the occupier or possessor of property or by another
26 person on ~~his~~ behalf of the occupier or possessor, ~~when~~ where the actor
27 knows that the person using the force is doing so under a claim of right
28 to protect the property, except that this limitation shall not apply if:

29 (a) The actor is a public officer acting in the performance of the
30 actor's ~~his~~ duties or a person lawfully assisting the actor ~~him~~ ~~therein~~
31 or a person making or assisting in a lawful arrest;

1 (b) The actor has been unlawfully dispossessed of the property and
2 is making a reentry or recapture justified by section 28-1411; or

3 (c) The actor believes that such force is necessary to protect the
4 actor himself against death or serious bodily harm.

5 (4) The use of deadly force shall not be justifiable under this
6 section unless the actor believes that such force is necessary to protect
7 the actor himself against death, serious bodily harm, kidnapping or
8 sexual intercourse compelled by force or threat, nor is it justifiable
9 if:

10 (a) The actor, with the purpose of causing death or serious bodily
11 harm, provoked the use of force against the actor himself in the same
12 encounter; or

13 (b) The actor knows that the actor ~~he~~ can avoid the necessity of
14 using such force with complete safety by retreating or by surrendering
15 possession of a thing to a person asserting a claim of right thereto or
16 by complying with a demand that the actor ~~he~~ abstain from any action
17 which the actor ~~he~~ has no duty to take, except that:

18 (i) The actor ~~is shall~~ not be obliged to retreat from the actor's
19 ~~his~~ dwelling or place of work, unless the actor ~~he~~ was the initial
20 aggressor or is assailed in the actor's ~~his~~ place of work by another
21 person whose place of work the actor knows it to be; ~~and~~

22 (ii) The actor is not obliged to retreat from a motor vehicle in
23 which the actor is lawfully present, unless the actor was the initial
24 aggressor; and

25 (iii) (ii) A public officer justified in using force in the
26 performance of the officer's ~~his~~ duties, ~~or~~ a person justified in using
27 force in assisting the officer, ~~his assistance~~ or a person justified in
28 using force in making an arrest or preventing an escape shall not be
29 obliged to desist from efforts to perform such duty, effect such arrest,
30 or prevent such escape because of resistance or threatened resistance by
31 or on behalf of the person against whom such action is directed.

1 (5) Except as required by subsections (3) and (4) of this section, a
2 person employing protective force may estimate the necessity thereof
3 under the circumstances as such person ~~he~~ believes them to be when the
4 force is used, without retreating, surrendering possession, doing any
5 other act which such person ~~he~~ has no legal duty to do, or abstaining
6 from any lawful action.

7 (6) The justification afforded by this section extends to the use of
8 confinement as protective force only if the actor takes all reasonable
9 measures to terminate the confinement as soon as the actor ~~he~~ knows that
10 the actor ~~he~~ safely can do so, unless the person confined has been
11 arrested on a charge of crime.

12 **Sec. 3.** Section 28-1410, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 28-1410 (1) Subject to the provisions of this section and of section
15 28-1414, the use of force upon or toward the person of another is
16 justifiable to protect a third person when:

17 (a) The actor would be justified under section 28-1409 in using such
18 force to protect the actor ~~himself~~ against the injury the actor ~~he~~
19 believes to be threatened to the person whom the actor ~~he~~ seeks to
20 protect;

21 (b) Under the circumstances as the actor believes them to be, the
22 person whom the actor ~~he~~ seeks to protect would be justified in using
23 such protective force; and

24 (c) The actor believes that ~~his~~ intervention by the actor is
25 necessary for the protection of such other person.

26 (2) Notwithstanding subsection (1) of this section:

27 (a) When the actor would be obliged under section 28-1409 to
28 retreat, to surrender the possession of a thing or to comply with a
29 demand before using force in self-protection, the actor ~~he~~ shall not be
30 obliged to do so before using force for the protection of another person,
31 unless the actor ~~he~~ knows that the actor ~~he~~ can thereby secure the

1 complete safety of such other person;

2 (b) When the person whom the actor seeks to protect would be obliged
3 under section 28-1409 to retreat, to surrender the possession of a thing
4 or to comply with a demand if such person ~~he~~ knew that such person ~~he~~
5 could obtain complete safety by so doing, the actor is obliged to try to
6 cause such person ~~him~~ to do so before using force in such person's ~~his~~
7 protection if the actor knows that such person ~~he~~ can obtain complete
8 safety in that way; ~~and~~

9 (c) Neither the actor nor the person whom the actor ~~he~~ seeks to
10 protect is obliged to retreat when in the other's dwelling or place of
11 work to any greater extent than in his or her own; ~~and -~~

12 (d) Neither the actor nor the person whom the actor seeks to protect
13 is obliged to retreat when lawfully present in the other's motor vehicle
14 to any greater extent than his or her own.

15 **Sec. 4.** Original sections 28-1406, 28-1409, and 28-1410, Reissue
16 Revised Statutes of Nebraska, are repealed.