

061174304

HOUSE BILL NO. 879

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend the Code of Virginia by adding sections numbered 18.2-91.1 through 18.2-91.4, relating to permissible use of defensive force against another; self-defense.

Patrons—Gear, Abbitt, Hogan and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 18.2-91.1 through 18.2-91.4 as follows:

§ 18.2-91.1. Home protection; use of deadly force; presumption of fear of death or great bodily harm.

A. A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

1. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

2. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

B. The presumption set forth in subsection A does not apply if:

1. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or the lawful owner, lessee, or titleholder of the vehicle, and there is no protective order extant prohibiting contact between the person against whom the defensive force is used and the person who uses defensive force;

2. The person against whom the defensive force is used seeks to remove a child or grandchild from another when the child or grandchild is in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used;

3. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

4. The person against whom the defensive force is used is a law-enforcement officer, as defined in § 18.2-57, who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his official duties and the officer identified himself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law-enforcement officer.

C. A person who is not engaged in an unlawful activity and who is attacked in any place where he has a right to be has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force if he reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of an unlawful act involving force or violence.

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

E. As used in this section, the term:

1. "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

2. "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

3. "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

§ 18.2-91.2. Use of force in defense of person.

A person is justified in using force, other than deadly force, against another when the person reasonably believes that such force is necessary to defend himself or another against another's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if he reasonably believes that such force is necessary to prevent imminent death or great

INTRODUCED

HB879

59 *bodily harm to himself or another or to prevent the imminent commission of an unlawful act involving*
60 *force or violence.*

61 *§ 18.2-91.3. Use of force in defense of others.*

62 *A. A person is justified in the use of force, other than deadly force, against another when and to the*
63 *extent that the person reasonably believes that such force is necessary to prevent or terminate the*
64 *other's trespass on, or other tortious or criminal interference with, either real property other than a*
65 *dwelling or personal property, lawfully in his possession or in the possession of a member of his*
66 *immediate family or household or of a person whose property he has a legal duty to protect.*

67 *B. A person is justified in the use of deadly force only if he reasonably believes that such force is*
68 *necessary to prevent the imminent commission of a violent felony. A person who uses defensive force*
69 *does not have a duty to retreat if he is in a place where he has a right to be.*

70 *§ 18.2-91.4. No civil liability and no arrest for justifiable use of force.*

71 *A. A person who lawfully uses force described in § 18.2-91.1 shall not be liable in a civil action for*
72 *the use of such force, unless the person against whom force was used is a law-enforcement officer, as*
73 *defined in § 9.1-101, who was acting in the performance of his official duties and the person using force*
74 *knew or reasonably should have known that the person was a law-enforcement officer. A court shall*
75 *award reasonable attorney fees, court costs, compensation for loss of income, and all expenses incurred*
76 *by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant*
77 *is not civilly liable*

78 *B. A law-enforcement agency may use standard procedures for investigating the use of force as*
79 *described in subsection A, but the agency may not arrest the person for using force unless it determines*
80 *that there is probable cause that the force used was unlawful.*