

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 298**

Introduced by Christensen, 44.

Read first time January 12, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-1409, 28-1410, 28-1411, and 28-1416, Reissue Revised  
3 Statutes of Nebraska; to change provisions relating to  
4 self-protection; and to repeal the original sections.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-1409, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1409 (1) Subject to the provisions of this section and  
4 of section 28-1414, the use of force upon or toward another person is  
5 justifiable when the actor believes that such force is immediately  
6 necessary for the purpose of protecting himself or herself against  
7 the use of unlawful force by such other person on the present  
8 occasion. A person not engaged in illegal activity who is attacked in  
9 a place where he or she has a right to be has no duty to retreat and  
10 has the right to stand his or her ground and meet force with force.

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

14           (3) The use of such force is not justifiable under this  
15 section to resist force used by the occupier or possessor of property  
16 or by another person on his or her behalf, where the actor knows that  
17 the person using the force is doing so under a claim of right to  
18 protect the property, except that this limitation shall not apply if:

19           (a) The actor is a public officer acting in the  
20 performance of his or her duties or a person lawfully assisting him  
21 or her therein or a person making or assisting in a lawful arrest;

22           (b) The actor has been unlawfully dispossessed of the  
23 property and is making a reentry or recapture justified by section  
24 28-1411; or

25           (c) The actor believes that such force is necessary to

1 protect himself or herself against death or serious bodily harm.

2 (4) The use of deadly force shall not be justifiable  
3 under this section unless the actor believes that such force is  
4 necessary to protect himself or herself against death, serious bodily  
5 harm, kidnapping, or sexual intercourse compelled by force or threat,  
6 nor is it justifiable if: ~~(a) The the actor, with the purpose of~~  
7 ~~causing death or serious bodily harm, provoked the use of force~~  
8 ~~against himself or herself in the same encounter. ; or~~

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

14 ~~(i) The actor shall not be obliged to retreat from his~~  
15 ~~dwelling or place of work, unless he was the initial aggressor or is~~  
16 ~~assailed in his place of work by another person whose place of work~~  
17 ~~the actor knows it to be; and~~

18 ~~(ii) A public officer justified in using force in the~~  
19 ~~performance of his duties or a person justified in using force in his~~  
20 ~~assistance or a person justified in using force in making an arrest~~  
21 ~~or preventing an escape shall not be obliged to desist from efforts~~  
22 ~~to perform such duty, effect such arrest or prevent such escape~~  
23 ~~because of resistance or threatened resistance by or on behalf of the~~  
24 ~~person against whom such action is directed.~~

25 (5) Except as required by subsections (3) and (4) of this

1 section, a person employing protective force may estimate the  
2 necessity thereof under the circumstances as he or she believes them  
3 to be when the force is used, without retreating, surrendering  
4 possession, doing any other act which he or she has no legal duty to  
5 do, or abstaining from any lawful action.

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

11 Sec. 2. Section 28-1410, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 28-1410 ~~(1)~~—Subject to the provisions of this section and  
14 of section 28-1414, the use of force upon or toward the person of  
15 another is justifiable to protect a third person when:

16 ~~(a)~~—(1) The actor would be justified under section  
17 28-1409 in using such force to protect himself or herself against the  
18 injury he or she believes to be threatened to the person whom he or  
19 she seeks to protect;

20 ~~(b)~~—(2) Under the circumstances as the actor believes  
21 them to be, the person whom he or she seeks to protect would be  
22 justified in using such protective force; and

23 ~~(c)~~—(3) The actor believes that his or her intervention  
24 is necessary for the protection of such other person.

25 ~~(2) Notwithstanding subsection (1) of this section:~~

1           ~~(a) When the actor would be obliged under section 28-1409~~  
2 ~~to retreat, to surrender the possession of a thing or to comply with~~  
3 ~~a demand before using force in self-protection, he shall not be~~  
4 ~~obliged to do so before using force for the protection of another~~  
5 ~~person, unless he knows that he can thereby secure the complete~~  
6 ~~safety of such other person;~~

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

13           ~~(c) Neither the actor nor the person whom he seeks to~~  
14 ~~protect is obliged to retreat when in the other's dwelling or place~~  
15 ~~of work to any greater extent than in his own.~~

16           Sec. 3. Section 28-1411, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           28-1411 (1) Subject to the provisions of this section and  
19 of section 28-1414, the use of force upon or toward the person of  
20 another is justifiable when the actor believes that such force is  
21 immediately necessary:

22           (a) To prevent or terminate an unlawful entry or other  
23 trespass upon land or a trespass against or the unlawful carrying  
24 away of tangible, movable property; Provided, that such land or  
25 movable property is, or is believed by the actor to be, in his or her

1 possession or in the possession of another person for whose  
2 protection he or she acts; or

3 (b) To effect an entry or reentry upon land or to retake  
4 tangible movable property; Provided, that the actor believes that he  
5 or she or the person by whose authority he or she acts or a person  
6 from whom he or she or such other person derives title was unlawfully  
7 dispossessed of such land or movable property and is entitled to  
8 possession; and provided further, that:

9 (i) The force is used immediately or on fresh pursuit  
10 after such dispossession; or

11 (ii) The actor believes that the person against whom he  
12 or she uses force has no claim of right to the possession of the  
13 property and, in the case of land, the circumstances, as the actor  
14 believes them to be, are of such urgency that it would be an  
15 exceptional hardship to postpone the entry or reentry until a court  
16 order is obtained.

17 (2) For the purposes of subsection (1) of this section:

18 (a) A person who has parted with the custody of property  
19 to another who refuses to restore it to him or her is no longer in  
20 possession, unless such property is movable and was and still is  
21 located on land in his or her possession;

22 (b) A person who has been dispossessed of land does not  
23 regain possession thereof merely by setting foot thereon; and

24 (c) A person who has a license to use or occupy real  
25 property is deemed to be in possession thereof except against the

1 licenser acting under claim of right.

2 (3) The use of force is justifiable under this section  
3 only if the actor first requests the person against whom such force  
4 is used to desist from his or her interference with the property,  
5 unless the actor believes that:

6 (a) Such request would be useless;

7 (b) It would be dangerous to himself or herself or  
8 another person to make the request; or

9 (c) Substantial harm will be done to the physical  
10 condition of the property which is sought to be protected before the  
11 request can effectively be made.

12 (4) The use of force to prevent or terminate a trespass  
13 is not justifiable under this section if the actor knows that the  
14 exclusion of the trespasser will expose him or her to substantial  
15 danger of serious bodily harm.

16 (5) The use of force to prevent an entry or reentry upon  
17 land or the recapture of movable property is not justifiable under  
18 this section, although the actor believes that such reentry or  
19 recapture is unlawful, if:

20 (a) The reentry or recapture is made by or on behalf of a  
21 person who was actually dispossessed of the property; and

22 (b) It is otherwise justifiable under subdivision (1)(b)  
23 of this section.

24 (6) The use of deadly force is not justifiable under this  
25 section unless the actor believes that:

1           (a) The person against whom the force is used has  
2 unlawfully entered an occupied dwelling or occupied motor vehicle and  
3 is not attempting to exit the dwelling or motor vehicle at the time  
4 deadly force is used;

5           ~~(a)~~(b) The person against whom the force is used is  
6 attempting to dispossess him or her of his or her dwelling otherwise  
7 than under a claim of right to its possession; or

8           ~~(b)~~(c) The person against whom the force is used is  
9 attempting to commit or consummate arson, burglary, robbery or other  
10 felonious theft or property destruction and either:

11           (i) Has employed or threatened deadly force against or in  
12 the presence of the actor; or

13           (ii) The use of force other than deadly force to prevent  
14 the commission or the consummation of the crime would expose the  
15 actor or another in his or her presence to substantial danger of  
16 serious bodily harm.

17           (7) The justification afforded by this section extends to  
18 the use of confinement as protective force only if the actor takes  
19 all reasonable measures to terminate the confinement as soon as he or  
20 she knows that he or she can do so with safety to the property,  
21 unless the person confined has been arrested on a charge of crime.

22           (8) The justification afforded by this section extends to  
23 the use of a device for the purpose of protecting property only if:

24           (a) Such device is not designed to cause or known to  
25 create a substantial risk of causing death or serious bodily harm;



1           (b) Such use of the particular device to protect such  
2 property from entry or trespass is reasonable under the  
3 circumstances, as the actor believes them to be; and

4           (c) Such device is one customarily used for such a  
5 purpose or reasonable care is taken to make known to probable  
6 intruders the fact that it is used.

7           (9) The use of force to pass a person whom the actor  
8 believes to be purposely or knowingly and unjustifiably obstructing  
9 the actor from going to a place to which he or she may lawfully go is  
10 justifiable if:

11           (a) The actor believes that the person against whom he or  
12 she uses force has no claim of right to obstruct the actor;

13           (b) The actor is not being obstructed from entry or  
14 movement on land which he or she knows to be in the possession or  
15 custody of the person obstructing him or her, or in the possession or  
16 custody of another person by whose authority the obstructor acts,  
17 unless the circumstances, as the actor believes them to be, are of  
18 such urgency that it would not be reasonable to postpone the entry or  
19 movement on such land until a court order is obtained; and

20           (c) The force used is not greater than would be  
21 justifiable if the person obstructing the actor were using force  
22 against him or her to prevent his or her passage.

23           Sec. 4. Section 28-1416, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           28-1416 (1) In any prosecution based on conduct which is

1 justifiable under sections 28-1406 to 28-1416, justification is an  
2 affirmative defense.

3           (2) The fact that conduct is justifiable under sections  
4 28-1406 to 28-1416 ~~does not abolish or impair any remedy for such~~  
5 ~~conduct which is available in any civil action.~~ establishes immunity  
6 in any civil action against the actor for such conduct unless the  
7 actor recklessly or negligently injures or creates a risk of injury  
8 to an innocent person or innocent persons as set forth in subsection  
9 (2) or (3) or section 28-1414.

10           Sec. 5. Original sections 28-1409, 28-1410, 28-1411, and  
11 28-1416, Reissue Revised Statutes of Nebraska, are repealed.