

ASSEMBLY BILL NO. 70—ASSEMBLYMEN HAMBRICK, OSCARSON AND FIORE

PREFILED JANUARY 17, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the use of force in defense of persons and property. (BDR 15-10)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the use of force; revising the provisions governing justifiable homicide; revising the provisions governing civil liability in actions involving the use of force; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that justifiable homicide is the killing of a human being
2 in necessary self-defense, or in defense of habitation, property or person against a
3 person who manifestly intends or endeavors to commit a felony or to enter the
4 habitation of another for the purpose of assaulting a person who is in the habitation.
5 (NRS 200.120) Section 1 of this bill revises the definition of “justifiable homicide”
6 to include specifically the killing of a person in defense of a motor vehicle or in
7 defense against any person who manifestly intends and endeavors to enter the
8 motor vehicle of another for the purpose of assaulting a person who is in the motor
9 vehicle.

10 Existing law provides that a killing is justifiable if the circumstances were
11 sufficient to excite the fears of a reasonable person and the person killing really
12 acted under the influence of those fears and not in a spirit of revenge. (NRS
13 200.130) Section 2 of this bill establishes a presumption that the killing is
14 justifiable under the standard set forth in NRS 200.130 if the person killing: (1)
15 knew or had reason to believe that the person who was killed was entering
16 unlawfully and with force, or attempting to enter unlawfully and with force, the
17 habitation or property of another; (2) knew or had reason to believe that the person
18 who was killed was committing or attempting to commit a felony; and (3) did not
19 provoke the person who was killed.

20 Existing law provides that in a civil action brought by or on behalf of a person
21 against whom force which is intended or likely to cause death or bodily injury was
22 used: (1) there is a presumption that the person who used such force had a
23 reasonable fear of imminent death or bodily injury to himself or herself or another



24 person if the person against whom such force was used was committing burglary or
25 invasion of the home; and (2) that presumption must be overcome by clear and
26 convincing evidence to the contrary for the civil action to be maintained. (NRS
27 41.095) **Section 3** of this bill extends that presumption to circumstances in which
28 the person who used such force was in his or her motor vehicle and the other person
29 was committing grand larceny of the motor vehicle with the use or threatened use
30 of a deadly weapon. **Section 3** also enacts a provision, based upon Texas law,
31 which provides that a person is immune from civil liability for using force which is
32 intended or likely to cause death or bodily injury if the person was justified in using
33 such force under the applicable provisions of Nevada criminal law. (Texas Civil
34 Practice and Remedies Code, § 83.001)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 200.120 is hereby amended to read as follows:
2 200.120 1. Justifiable homicide is the killing of a human
3 being in necessary self-defense, or in defense of habitation, property
4 *, including, without limitation, a motor vehicle,* or person, against
5 one who manifestly intends or endeavors, by violence or surprise, to
6 commit a felony, or against any person or persons who manifestly
7 intend and endeavor, in a violent, riotous, tumultuous or
8 surreptitious manner, to enter the habitation *or property, including,*
9 *without limitation, a motor vehicle,* of another for the purpose of
10 assaulting or offering personal violence to any person dwelling or
11 being therein.

12 2. A person is not required to retreat before using deadly force
13 as provided in subsection 1 if the person:

- 14 (a) Is not the original aggressor;
15 (b) Has a right to be present at the location where deadly force is
16 used; and
17 (c) Is not actively engaged in conduct in furtherance of criminal
18 activity at the time deadly force is used.

19 *3. As used in this section, "motor vehicle" means every*
20 *vehicle which is self-propelled.*

21 **Sec. 2.** NRS 200.130 is hereby amended to read as follows:

22 200.130 1. A bare fear of any of the offenses mentioned in
23 NRS 200.120, to prevent which the homicide is alleged to have been
24 committed, ~~is not~~ *is not* sufficient to justify the killing. It
25 must appear that the circumstances were sufficient to excite the
26 fears of a reasonable person and that the ~~party~~ *person* killing really
27 acted under the influence of those fears and not in a spirit of
28 revenge.

29 *2. It is presumed that the circumstances were sufficient to*
30 *excite the fears of a reasonable person and that the person killing*



1 *really acted under the influence of those fears and not in a spirit*
2 *of revenge if the person killing:*

3 *(a) Knew or had reason to believe that the person who was*
4 *killed was entering unlawfully and with force, or attempting to*
5 *enter unlawfully and with force, the habitation or property,*
6 *including, without limitation, a motor vehicle, of another;*

7 *(b) Knew or had reason to believe that the person who was*
8 *killed was committing or attempting to commit a felony; and*

9 *(c) Did not provoke the person who was killed.*

10 3. *As used in this section, "motor vehicle" means every*
11 *vehicle which is self-propelled.*

12 **Sec. 3.** NRS 41.095 is hereby amended to read as follows:

13 41.095 1. For the purposes of NRS 41.085 and 41.130, any
14 person who uses ~~;~~ while :

15 *(a) While* lawfully in his or her residence , ~~or~~ in transient
16 lodging ~~or~~ *or in a motor vehicle that is not his or her residence,*
17 *force which is intended or likely to cause death or bodily injury is*
18 *presumed to have had a reasonable fear of imminent death or bodily*
19 *injury to himself or herself or another person lawfully in the*
20 *residence ,* ~~or~~ *transient lodging or motor vehicle* if the force is
21 used against a person who is committing burglary , ~~or~~ invasion of
22 the home , *or grand larceny of the motor vehicle with the use or*
23 *threatened use of a deadly weapon* and the person using the force
24 knew or had reason to believe that burglary , ~~or~~ invasion of the
25 home , *or grand larceny of the motor vehicle with the use or*
26 *threatened use of a deadly weapon* was being committed. An action
27 to recover damages for personal injuries to or the wrongful death of
28 the person who committed burglary , ~~or~~ invasion of the home , *or*
29 *grand larceny of the motor vehicle with the use or threatened use*
30 *of a deadly weapon* may not be maintained against the person who
31 used such force unless the presumption is overcome by clear and
32 convincing evidence to the contrary.

33 *(b) Force which is intended or likely to cause death or bodily*
34 *injury is immune from civil liability in an action to recover*
35 *damages for personal injuries to or the wrongful death of a person*
36 *against whom such force was used if the use of such force was*
37 *justified under the applicable provisions of chapter 200 of NRS*
38 *relating to the use of such force.*

39 2. As used in this section ~~;~~ "residence" :

40 *(a) "Deadly weapon" has the meaning ascribed to it in*
41 *NRS 193.165.*

42 *(b) "Motor vehicle" means every vehicle which is self-*
43 *propelled.*



- 1 (c) ***Residence*** means any house, room, apartment, tenement
- 2 or other building, vehicle, vehicle trailer, semitrailer, house trailer or
- 3 boat designed or intended for occupancy as a residence.

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