

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H1/28/19 H2/6/19 H3/27/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

HOUSE BILL 1059

4

5 By: Representative Pilkington

6 By: Senators G. Stubblefield, B. Ballinger, T. Garner

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## For An Act To Be Entitled

9 AN ACT CONCERNING THE USE OF PHYSICAL FORCE IN SELF-  
10 DEFENSE OR IN THE DEFENSE OF OTHERS; AND FOR OTHER  
11 PURPOSES.

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## Subtitle

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CONCERNING THE USE OF PHYSICAL FORCE IN

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SELF-DEFENSE OR IN THE DEFENSE OF OTHERS.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. DO NOT CODIFY. Legislative intent.

22 It is the intent of the General Assembly to implement the same self-  
23 defense scheme as have our neighbors in Tennessee, as of January 1, 2019.

24

25 SECTION 2. Arkansas Code § 5-2-606 is amended to read as follows:

26 5-2-606. Use of physical force or deadly physical force in defense of  
27 a person.

28 ~~(a)(1) A person is justified in using physical force upon another~~  
29 ~~person to defend himself or herself or a third person from what the person~~  
30 ~~reasonably believes to be the use or imminent use of unlawful physical force~~  
31 ~~by that other person, and the person may use a degree of physical force that~~  
32 ~~he or she reasonably believes to be necessary.~~

33 ~~(2) However, the person may not use deadly physical force except~~  
34 ~~as provided in § 5-2-607.~~

35 ~~(b) A person is not justified in using physical force upon another~~  
36 ~~person if:~~



1 ~~(1) With purpose to cause physical injury or death to the other~~  
2 ~~person, the person provokes the use of unlawful physical force by the other~~  
3 ~~person;~~

4 ~~(2)(A) The person is the initial aggressor.~~

5 ~~(B) However, the initial aggressor's use of physical force~~  
6 ~~upon another person is justifiable if:~~

7 ~~(i) The initial aggressor in good faith withdraws~~  
8 ~~from the encounter and effectively communicates to the other person his or~~  
9 ~~her purpose to withdraw from the encounter; and~~

10 ~~(ii) The other person continues or threatens to~~  
11 ~~continue the use of unlawful physical force; or~~

12 ~~(3) The physical force involved is the product of a combat by~~  
13 ~~agreement not authorized by law.~~

14 (a) As used in this section:

15 (1) "Business" means a commercial enterprise or establishment  
16 owned by a person as all or part of the person's livelihood or is under the  
17 person's control, or who is an employee or agent of the commercial enterprise  
18 or establishment with responsibility for protecting persons and property that  
19 includes the interior and exterior premises of the business;

20 (2) "Curtilage" means the area surrounding a dwelling that is  
21 necessary, convenient, and habitually used for domestic purposes and for  
22 those activities associated with the sanctity of a person's home;

23 (3) "Dwelling" means a building or conveyance of any kind,  
24 including an attached porch, whether the building or conveyance is temporary  
25 or permanent, mobile or immobile, that has a roof over it, including a tent,  
26 and is designed for or capable of being used by people;

27 (4) "Residence" means a dwelling in which a person resides,  
28 either temporarily or permanently, or is visiting as an invited guest, or a  
29 dwelling, building or other appurtenance within the curtilage of the  
30 residence; and

31 (5) "Vehicle" means a motorized vehicle that is self-propelled  
32 and designed for use on public highways to transport people or property.

33 (b)(1) A person who is not engaged in unlawful activity and is in a  
34 place where the person has a right to be has no duty to retreat before  
35 threatening or using physical force against another person when and to the  
36 degree the person reasonably believes the physical force is immediately

1 necessary to protect against the other person's use or attempted use of  
2 unlawful physical force.

3 (2) A person who is not engaged in unlawful activity and is in a  
4 place where the person has a right to be has no duty to retreat before  
5 threatening or using physical force intended or likely to cause death or  
6 serious physical injury, if:

7 (A) The person has a reasonable belief that there is an  
8 imminent danger of death or serious physical injury;

9 (B) The danger creating the belief of imminent death or  
10 serious physical injury is real, or honestly believed to be real at the time;  
11 and

12 (C) The belief of danger is founded upon reasonable  
13 grounds.

14 (c) A person using physical force intended or likely to cause death or  
15 serious physical injury to another person within a residence, business,  
16 dwelling, or vehicle is presumed to have held a reasonable belief of imminent  
17 death or serious physical injury to himself or herself, a family member, a  
18 member of the household, or a person visiting as an invited guest, when the  
19 physical force is used against another person who unlawfully and forcibly is  
20 attempting to enter or has unlawfully and forcibly entered the residence,  
21 business, dwelling, or vehicle, and the person using defensive physical force  
22 knew or had reason to believe that an unlawful and forcible entry was  
23 attempted or had occurred.

24 (d) The presumption established in subsection (c) of this section  
25 shall not apply, if:

26 (1)(A) The person against whom the physical force is used has  
27 the right to be in or is a lawful resident of the dwelling, business,  
28 residence, or vehicle, such as an owner, lessee, or titleholder.

29 (B) However, the person is not prohibited from entering  
30 the dwelling, business, residence, or occupied vehicle by an order of  
31 protection, injunction for protection from domestic abuse, or a court order  
32 of no contact against the other person;

33 (2) The person against whom the physical force is used is  
34 attempting to remove a person who is a child or grandchild of, or is  
35 otherwise in the lawful custody or under the lawful guardianship of, the  
36 person against whom the defensive physical force is used;

1 (3) The person using physical force is engaged in an unlawful  
2 activity or is using the dwelling, business, residence, or occupied vehicle  
3 to further an unlawful activity; or

4 (4) The person against whom physical force is used is a law  
5 enforcement officer who enters or attempts to enter a dwelling, business,  
6 residence, or vehicle in the performance of the law enforcement officer's  
7 official duties, and the law enforcement officer identified himself or  
8 herself in accordance with any applicable law, or the person using physical  
9 force knew or reasonably should have known that the person entering or  
10 attempting to enter was a law enforcement officer.

11 (e) The threat or use of physical force against another person is not  
12 justified:

13 (1) If the person using physical force consented to the exact  
14 physical force used or attempted by the other person;

15 (2) If the person using physical force provoked the other  
16 person's use or attempted use of unlawful physical force, unless:

17 (A) The person using physical force abandons the encounter  
18 or clearly communicates to the other person the intent to do so; and

19 (B) The other person continues or attempts to use unlawful  
20 physical force against the person; or

21 (3) To resist a halt at a roadblock, arrest, search, or stop and  
22 frisk that the person using physical force knows is being made by a law  
23 enforcement officer, unless:

24 (A) The law enforcement officer uses or attempts to use  
25 greater physical force than necessary to make the halt at a roadblock,  
26 arrest, search, stop and frisk; and

27 (B) The person using physical force reasonably believes  
28 that the physical force is immediately necessary to protect against the law  
29 enforcement officer's use or attempted use of greater physical force than  
30 necessary.

31  
32 SECTION 3. Arkansas Code § 5-2-607 is repealed.

33 ~~5-2-607. Use of deadly physical force in defense of a person.~~

34 ~~(a) A person is justified in using deadly physical force upon another~~  
35 ~~person if the person reasonably believes that the other person is:~~

36 ~~(1) Committing or about to commit a felony involving physical~~

1 ~~force or violence;~~

2 ~~(2) Using or about to use unlawful deadly physical force; or~~

3 ~~(3) Imminently endangering the person's life or imminently about~~  
 4 ~~to victimize the person as described in § 9-15-103 from the continuation of a~~  
 5 ~~pattern of domestic abuse.~~

6 ~~(b) A person may not use deadly physical force in self-defense if the~~  
 7 ~~person knows that he or she can avoid the necessity of using deadly physical~~  
 8 ~~force;~~

9 ~~(1)(A) By retreating;~~

10 ~~(B) However, a person is not required to retreat if the~~  
 11 ~~person is:~~

12 ~~(i) Unable to retreat with complete safety;~~

13 ~~(ii) In the person's dwelling or on the curtilage~~  
 14 ~~surrounding the person's dwelling and was not the original aggressor; or~~

15 ~~(iii) A law enforcement officer or a person~~  
 16 ~~assisting at the direction of a law enforcement officer; or~~

17 ~~(2) With complete safety by surrendering possession of property~~  
 18 ~~to a person claiming a lawful right to possession of the property.~~

19 ~~(c) As used in this section:~~

20 ~~(1) "Curtilage" means the land adjoining a dwelling that is~~  
 21 ~~convenient for residential purposes and habitually used for residential~~  
 22 ~~purposes, but not necessarily enclosed, and includes an outbuilding that is~~  
 23 ~~directly and intimately connected with the dwelling and in close proximity to~~  
 24 ~~the dwelling; and~~

25 ~~(2) "Domestic abuse" means:~~

26 ~~(A) Physical harm, physical injury, assault, or the~~  
 27 ~~infliction of fear of imminent physical harm, physical injury, or assault~~  
 28 ~~between family or household members; or~~

29 ~~(B) Any sexual conduct between family or household~~  
 30 ~~members, whether minors or adults, that constitutes a crime under the laws of~~  
 31 ~~this state.~~

32  
 33 SECTION 4. Arkansas Code § 5-2-608(b), concerning the use of physical  
 34 force in defense of premises, is amended to read as follows:

35 (b) A person may use deadly physical force under the circumstances set  
 36 forth in subsection (a) of this section if:

1                   (1) Use of deadly physical force is authorized by ~~§ 5-2-607~~ § 5-  
2 2-606; or

3                   (2) The person reasonably believes the use of deadly physical  
4 force is necessary to prevent the commission of arson or burglary by a  
5 trespasser.

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7           SECTION 5. Arkansas Code § 5-2-615(b) and (c), concerning use of  
8 physical force by a pregnant woman in defense of her unborn child, are  
9 amended to read as follows:

10           (b) A pregnant woman is justified in using physical force or deadly  
11 physical force against another person to protect her unborn child if, under  
12 the circumstances as the pregnant woman reasonably believes them to be, she  
13 would be justified under § 5-2-606 ~~or § 5-2-607~~ in using physical force or  
14 deadly physical force to protect herself against the unlawful physical force  
15 or unlawful deadly physical force she reasonably believes to be threatening  
16 her unborn child.

17           (c) The justification for using physical force or deadly physical  
18 force against another person to protect a pregnant woman's unborn child is  
19 not available if:

20                   (1) The use of the physical force or deadly physical force for  
21 protection was used by a person other than the pregnant woman; or

22                   (2)(A) The use of the deadly physical force for protection would  
23 not be allowed under ~~§ 5-2-607(b)~~ § 5-2-606.

24                               (B) However, the pregnant woman is not obligated to  
25 retreat or surrender possession of property as described in ~~§ 5-2-607(b)~~ § 5-  
26 2-606 unless the pregnant woman knows she can avoid the necessity of using  
27 deadly physical force and simultaneously ensure the complete safety of her  
28 unborn child.

29  
30           SECTION 6. Arkansas Code § 16-120-302 is amended to read as follows:  
31           16-120-302. Use of deadly physical force.

32           (a) A person is immune from civil action for the use of deadly  
33 physical force against another person who is an initial aggressor if the use  
34 of the deadly physical force was in accordance with ~~§ 5-2-607~~ § 5-2-606.

35           (b) A court shall award reasonable attorney's fees, costs, and trial-  
36 related expenses to a person in defense of a civil action brought by another

1 *person if the court finds that the person is immune from civil action as*  
2 *provided in this section.*

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*/s/Pilkington*