

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 612**

Introduced by Kintner, 2; Bloomfield, 17; Ebke, 32; Garrett, 3; Groene,  
42; Hughes, 44; Schilz, 47; Schnoor, 15; Smith, 14;  
Watermeier, 1.

Read first time January 21, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 28-1409, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to use of force in self-protection; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

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

3 28-1409 (1) Subject to the provisions of this section and of section  
4 28-1414, the use of force upon or toward another person is justifiable  
5 when the actor believes that such force is immediately necessary for the  
6 purpose of protecting himself against the use of unlawful force by such  
7 other person on the present occasion.

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

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

16 (a) The actor is a public officer acting in the performance of his  
17 duties or a person lawfully assisting him therein or a person making or  
18 assisting in a lawful arrest;

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

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

23 (4)(a) The use of deadly force is ~~shall not be~~ justifiable under  
24 this section if:

25 (i) The ~~unless the~~ actor believes that such force is necessary to  
26 protect himself against death, serious bodily harm, robbery, arson,  
27 burglary, kidnapping, or sexual intercourse compelled by force or  
28 threat; ~~, nor is it~~

29 (ii) The person against whom such force is used, at the time such  
30 force is used, is unlawfully entering, by force or stealth, or has  
31 unlawfully entered, by force or stealth, and remains within any dwelling,

1 place of business or employment, or occupied vehicle of the actor using  
2 such force;

3 (iii) The person against whom such force is used, at the time such  
4 force is used, is unlawfully removing or attempting to unlawfully remove  
5 another person against the other person's will from a dwelling, a place  
6 of business or employment, or an occupied vehicle of the actor using  
7 force; or

8 (iv) The actor using such force knows or has reason to believe that  
9 any of the actions set forth in subdivision (4)(a) of this section are  
10 occurring.

11 (b) The use of deadly force is not justifiable if:

12 (i) The actor using such force is engaged in a criminal offense, is  
13 attempting to escape from the scene of a criminal offense that the actor  
14 has committed, or is using the dwelling, place of business or employment,  
15 or occupied vehicle to further a criminal offense;

16 (ii) The actor is seeking to remove a child or grandchild or is  
17 otherwise in the lawful custody or under the lawful guardianship of the  
18 person against whom such force is used;

19 (iii) The person against whom such force is used is a peace officer  
20 who has entered or is attempting to enter a dwelling, place of business  
21 or employment, or occupied vehicle in the lawful performance of the peace  
22 officer's official duties, and the actor knows or reasonably should know  
23 that the person who has entered or is attempting to enter is a peace  
24 officer;

25 (iv) The person against whom such force is used has the right to be  
26 in, or is a lawful resident of, the dwelling, place of business or  
27 employment, or occupied vehicle of the actor using such force, and a  
28 protective or no-contact order is not in effect against the person  
29 against whom such force is used; or

30 (v a) The actor, with the purpose of causing death or serious bodily  
31 harm, provoked the use of force against himself in the same encounter. ÷

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

7 (5 i) The actor shall not be obliged to retreat from any place where  
8 the actor is lawfully present or by surrendering possession of a thing to  
9 a person asserting a claim of right thereto or by complying with a demand  
10 that he abstain from any action which he has no duty to take before using  
11 force, including deadly force, his dwelling or place of work, unless he  
12 is engaged in illegal activity, was the initial aggressor, or is assailed  
13 in his place of work by another person whose place of work the actor  
14 knows it to be. A finder of fact shall not be permitted to consider the  
15 possibility of retreat as a factor in determining whether or not the  
16 actor who used force reasonably believed that the force was necessary to  
17 prevent injury, loss, or risk to life or safety. ; and

18 (6 ii) A public officer justified in using force in the performance  
19 of his duties or a person justified in using force in his assistance or a  
20 person justified in using force in making an arrest or preventing an  
21 escape shall not be obliged to desist from efforts to perform such duty,  
22 effect such arrest or prevent such escape because of resistance or  
23 threatened resistance by or on behalf of the person against whom such  
24 action is directed.

25 (7 5) Except as required by subsections (3) and (4) of this section,  
26 a person employing protective force may estimate the necessity thereof  
27 under the circumstances as he believes them to be when the force is used,  
28 without retreating, surrendering possession, doing any other act which he  
29 has no legal duty to do, or abstaining from any lawful action.

30 (8) The actor may be wrong in the estimation of the danger or the  
31 force necessary to repel the danger as long as there is a reasonable

1 basis for the belief of the actor and the actor acts reasonably in the  
2 response to that belief.

3       (9 6) The justification afforded by this section extends to the use  
4 of confinement as protective force only if the actor takes all reasonable  
5 measures to terminate the confinement as soon as he knows that he safely  
6 can do so, unless the person confined has been arrested on a charge of  
7 crime.

8       Sec. 2.   Original section 28-1409, Reissue Revised Statutes of  
9 Nebraska, is repealed.