

REFERENCE TITLE: deadly force; use; home protection

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SCR 1001

Introduced by
Senator Harper

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, CONSTITUTION OF ARIZONA, BY ADDING SECTION 35; RELATING TO THE USE OF DEADLY FORCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Article II, Constitution of Arizona, is proposed to be amended by
4 adding section 35 as follows, if approved by the voters and on proclamation
5 of the Governor:

6 35. Home protection; use of deadly physical force;
7 presumption; definitions

8 A. A PERSON IS JUSTIFIED IN THREATENING OR USING PHYSICAL
9 FORCE OR DEADLY PHYSICAL FORCE AGAINST ANOTHER IF THE PERSON
10 REASONABLY BELIEVES HIMSELF OR ANOTHER PERSON TO BE IN IMMINENT
11 PERIL OF DEATH OR SERIOUS BODILY INJURY AND BOTH OF THE
12 FOLLOWING APPLY:

13 1. THE PERSON AGAINST WHOM THE PHYSICAL FORCE OR DEADLY
14 PHYSICAL FORCE IS USED WAS IN THE PROCESS OF UNLAWFULLY AND
15 FORCEFULLY ENTERING, OR HAD UNLAWFULLY AND FORCIBLY ENTERED, A
16 DWELLING, RESIDENCE OR OCCUPIED VEHICLE, OR HAD REMOVED OR WAS
17 ATTEMPTING TO REMOVE ANOTHER PERSON AGAINST THE OTHER PERSON'S
18 WILL FROM THE DWELLING, RESIDENCE OR OCCUPIED VEHICLE.

19 2. THE PERSON WHO USES PHYSICAL FORCE OR DEADLY PHYSICAL
20 FORCE KNEW OR HAD REASON TO BELIEVE THAT AN UNLAWFUL AND
21 FORCIBLE ENTRY OR UNLAWFUL AND FORCIBLE ACT WAS OCCURRING OR HAD
22 OCCURRED.

23 B. FOR THE PURPOSES OF SUBSECTION A, A PERSON IS PRESUMED
24 TO BE ACTING REASONABLY IF THE PERSON IS ACTING AGAINST ANOTHER
25 PERSON WHO UNLAWFULLY AND FORCEFULLY ENTERS OR ENTERED THE
26 PERSON'S DWELLING, RESIDENCE OR OCCUPIED VEHICLE.

27 C. THE PRESUMPTION UNDER SUBSECTION B DOES NOT APPLY IF:

28 1. THE PERSON AGAINST WHOM PHYSICAL FORCE OR DEADLY
29 PHYSICAL FORCE WAS USED HAS THE RIGHT TO BE IN OR IS A LAWFUL
30 RESIDENT OF THE DWELLING, RESIDENCE OR VEHICLE, INCLUDING AN
31 OWNER, LESSEE, INVITEE OR TITLEHOLDER, AND AN ORDER OF
32 PROTECTION OR INJUNCTION AGAINST HARASSMENT HAS NOT BEEN FILED
33 AGAINST THAT PERSON.

34 2. THE PERSON AGAINST WHOM THE PHYSICAL FORCE OR DEADLY
35 PHYSICAL FORCE WAS USED IS THE PARENT OR GRANDPARENT, OR HAS
36 LEGAL CUSTODY OR GUARDIANSHIP, OF A CHILD OR GRANDCHILD SOUGHT
37 TO BE REMOVED UNDER SUBSECTION A, PARAGRAPH 1.

38 3. THE PERSON WHO USES PHYSICAL FORCE OR DEADLY PHYSICAL
39 FORCE IS ENGAGED IN AN UNLAWFUL ACTIVITY OR IS USING THE
40 DWELLING, RESIDENCE OR OCCUPIED VEHICLE TO FURTHER AN UNLAWFUL
41 ACTIVITY.

42 4. THE PERSON AGAINST WHOM THE PHYSICAL FORCE OR DEADLY
43 PHYSICAL FORCE WAS USED IS A LAW ENFORCEMENT OFFICER WHO ENTERS
44 OR ATTEMPTS TO ENTER A DWELLING, RESIDENCE OR OCCUPIED VEHICLE
45 IN THE PERFORMANCE OF OFFICIAL DUTIES AND THE OFFICER IDENTIFIED

1 HIMSELF AS AN OFFICER OR THE PERSON USING FORCE KNEW OR
2 REASONABLY SHOULD HAVE KNOWN THAT THE PERSON WAS A LAW
3 ENFORCEMENT OFFICER.

4 D. A PERSON WHO IS ATTACKED IN ANY OTHER PLACE WHERE THE
5 PERSON HAS A RIGHT TO BE AND WHO IS NOT ENGAGED IN AN UNLAWFUL
6 ACTIVITY HAS THE RIGHT TO USE OR THREATEN TO USE PHYSICAL FORCE
7 OR DEADLY PHYSICAL FORCE IF THE PERSON REASONABLY BELIEVES IT IS
8 NECESSARY TO DO SO TO PREVENT DEATH OR SERIOUS BODILY INJURY TO
9 HIMSELF OR ANOTHER PERSON OR TO PREVENT THE COMMISSION OF A
10 VIOLENT OFFENSE.

11 E. A PERSON HAS NO DUTY TO RETREAT BEFORE THREATENING OR
12 USING PHYSICAL FORCE OR DEADLY PHYSICAL FORCE PURSUANT TO THIS
13 SECTION.

14 F. FOR THE PURPOSES OF THIS SECTION:

15 1. "DWELLING" MEANS A BUILDING OR CONVEYANCE OF ANY KIND,
16 INCLUDING ANY ATTACHED PORCH, WHETHER THE BUILDING OR CONVEYANCE
17 IS TEMPORARY OR PERMANENT, MOBILE OR IMMOBILE, THAT HAS A ROOF
18 OVER IT, INCLUDING A TENT, AND THAT IS DESIGNED TO BE OCCUPIED
19 BY PERSONS LODGING IN IT AT NIGHT.

20 2. "RESIDENCE" MEANS A DWELLING IN WHICH A PERSON RESIDES
21 EITHER TEMPORARILY OR PERMANENTLY OR IS VISITING AS AN INVITED
22 GUEST.

23 3. "VEHICLE" MEANS A CONVEYANCE OF ANY KIND, WHETHER OR
24 NOT MOTORIZED, THAT IS DESIGNED TO TRANSPORT PERSONS OR
25 PROPERTY.

26 2. The Secretary of State shall submit this proposition to the voters
27 at the next general election as provided by article XXI, Constitution of
28 Arizona.