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## DIGEST

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HB 53 Original

2017 Regular Session

Lyons

**Abstract:** Provides relative to those persons who may claim the defense of justifiable homicide or use of force or violence in defense.

Present law (R.S. 14:19, use of force or violence in defense) provides that the use of force or violence upon the person of another that does not result in the person's death is justifiable under the following circumstances:

- (1) When committed for the purpose of preventing a forcible offense or trespass against property if the force or violence used is "reasonable and apparently necessary to prevent" the offense.
- (2) When committed by a person lawfully inside a dwelling, place of business, or motor vehicle when the conflict began against a person who is attempting to make or who has made an unlawful entry into the dwelling, place of business, or motor vehicle. The person using the force or violence must reasonably believe that the use of force or violence is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

The person lawfully inside the dwelling, place of business, or motor vehicle is presumed to have held a reasonable belief that the use of force or violence was necessary if:

- (1) The person against whom the force or violence was used was in the process of unlawfully and forcibly entering or had unlawfully or forcibly entered the dwelling, place of business, or motor vehicle.
- (2) The person who used the force or violence knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

Present law (R.S. 14:20, justifiable homicide) provides that a homicide is justified:

- (1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from danger.
- (2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention.

- (3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling, place of business, or motor vehicle while the person is committing or attempting to commit a burglary or robbery of such dwelling, place of business, or motor vehicle.
- (4) When committed by a person lawfully inside a dwelling, place of business, or motor vehicle when the conflict began, against a person who is attempting to make or who has made an unlawful entry into the dwelling, place of business, or motor vehicle and the person who committed the homicide reasonably believed that the use of deadly force was necessary to prevent the entry or to compel the person to leave the dwelling, place of business, or motor vehicle.

The person lawfully inside the dwelling, place of business, or motor vehicle is presumed to have held a reasonable belief that the use of deadly force was necessary if:

- (1) The person against whom the deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.
- (2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

Additionally, present law (R.S. 14:19 and 20) provides that a person who is not engaged in unlawful activity has "no duty to retreat" and "may stand his or her ground and meet force with force" and prohibit the fact finder from considering the possibility of retreat as a factor in determining the person's reasonableness in using force or violence in defense.

Finally, present law (R.S. 14:21) provides that a person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

Proposed law amends present law (R.S. 14:21) to prohibit any person who perpetuates the conflict or who escalates the level of force used in the conflict from claiming the right of self-defense unless he, prior to the use of force or violence in defense that is the basis of the offense for which he is being prosecuted, withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

(Amends R.S. 14:21)