

JAN 22 2021

A BILL FOR AN ACT

RELATING TO CIVIL LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the right to defense
2 is a fundamental right. Good persons employing justifiable
3 force to protect themselves, others, or property should not be
4 subject to civil liability arising from those actions.
5 Defendants charged with a crime can face tens or even hundreds
6 of thousands of dollars in attorney's fees, court costs, lost
7 wages, and other expenses. This financial burden is unfair for
8 a person who is charged with a crime and subsequently found not
9 guilty because of defense of self, others, or property. Such
10 situations can lead to financial hardships, bankruptcy, and
11 other hardships that these individuals do not deserve to bear.

12 The purpose of this Act is to:

13 (1) Ban civil actions arising from use of justifiable
14 force if the defendant has been found not guilty of
15 any related criminal charges arising from use of
16 justifiable force; and



1 (2) Provide reimbursement of reasonable legal costs to
2 defendants when the defendant is found not guilty due
3 to the justifiable use of force to protect themselves,
4 others, or property under certain circumstances.

5 SECTION 2. Chapter 657, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§657- Limitation of civil actions arising from use of
9 justifiable force; related criminal charges. No action to
10 recover damages for any injury to property, real or personal, or
11 for bodily injury or wrongful death arising from justifiable use
12 of force pursuant to sections 703-304, 703-305, and 703-306
13 shall be commenced against a defendant who has been found not
14 guilty by reason of justification as a defense in a prosecution
15 for an offense arising from the same incident under sections
16 707-701.5, 707-702, 707-702.5, 707-703, 707-704, 707-705,
17 707-706, 707-710, 707-711, 707-712, 707-713, 707-714, 707-716,
18 707-717, 707-720, 707-721, or 707-722 and any related criminal
19 charges; provided that the defendant is granted reimbursement
20 pursuant to section 703- ."



1 SECTION 3. Chapter 703, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§703- Defense; reimbursement. (1) If a person charged
5 with an offense under sections 707-701.5, 707-702, 707-702.5,
6 707-703, 707-704, 707-705, 707-706, 707-710, 707-711, 707-712,
7 707-713, 707-714, 707-716, 707-717, 707-720, 707-721, or 707-722
8 is found not guilty by reason of justification as a defense
9 pursuant to sections 703-304, 703-305, or 703-306, the State
10 shall reimburse the defendant for all reasonable costs,
11 including lost wages; legal costs and fees, including those for
12 appeals; and other expenses involved in the defendant's defense.
13 The reimbursement shall not be an independent cause of action.
14 For a defendant to be entitled to an award of reasonable costs,
15 the trier of fact shall find by a preponderance of evidence that
16 the defendant's justification defense pursuant to sections
17 703-304, 703-305, or 703-306 entitles the defendant to
18 acquittal. If the trier of fact makes such a finding, the court
19 shall determine the amount of the award.

20 (2) Notwithstanding a finding by the trier of fact that
21 the defendant's justification defense pursuant to sections



1 703-304, 703-305, or 703-306, entitles the defendant to
2 acquittal, if the trier of fact also finds that the defendant
3 was engaged in criminal conduct substantially related to the
4 events giving rise to the charges against the defendant, the
5 court may deny or reduce the amount of the award. In
6 determining the amount of the award, the court shall also
7 consider the severity of the criminal conduct.

8 This section shall not be deemed to preclude the
9 legislature from paying a claim to the defendant where no award
10 was granted by the court or from paying a claim higher than the
11 award granted by the court.

12 (3) Whenever a jury finds that the defendant's
13 justification defense pursuant to sections 703-304, 703-305, or
14 703-306 entitles the defendant to an acquittal, the court shall
15 instruct the jury to return a special verdict in substantially
16 the following form:

17 Answer

18 "Yes" or "No"

19 1. Was the finding of not guilty based upon a
20 justification defense?



- 1 2. If your answer to question 1 is "no", do not answer
2 the remaining questions.
- 3 3. If your answer to question 1 is "yes", was the
4 defendant:
- 5 a. Protecting himself or herself?
6 b. Protecting another, including his or her family?
7 c. Protecting his or her property?
8 d. Engaged in criminal conduct substantially related
9 to the events giving rise to the crime with which
10 the defendant is charged?

11 (4) Whenever a court finds that the defendant's
12 justification defense pursuant to sections 703-304, 703-305, or
13 703-306 entitles the defendant to an acquittal, the court shall
14 consider the same questions identified in subsection (3)."

15 SECTION 4. Section 703-301, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§703-301 Justification a defense; civil remedies**
18 **~~[unaffected.] barred.~~** (1) In any prosecution for an offense,
19 justification, as defined in sections 703-302 through 703-309,
20 is a defense.



1 (2) The fact that conduct is justifiable under this
2 chapter [~~does not~~] shall abolish [~~or impair~~] any remedy for such
3 conduct which is available in any civil action."

4 SECTION 5. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

10

INTRODUCED BY:

Mike Hubbard



S.B. NO. 334

Report Title:

Limitation of Civil Actions; Crime; Justification Defense;
Protection of Self, Others, or Property; Reimbursement

Description:

Limits civil actions arising from use of justifiable force if the defendant has been found not guilty by reason of a justification defense. Provides reimbursement of reasonable legal costs to defendants charged with an offense under certain sections of the Penal Code if the defendant is found not guilty because the use of force upon or toward another person is justifiable because of self-protection, protection of others, or protection of property.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

