

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 169

H. P. 143

House of Representatives, January 8, 1981

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Crowley of Stockton Springs.

Cosponsor: Mr. Stevenson of Unity.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Concerning the Use of Force to Protect Property.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17-A MRSA § 2, sub-§ 24, as enacted by PL 1977, c. 510, § 12, is amended to read:

24. "Structure" means a building or other place designed to provide protection for persons or property against weather or intrusion, ~~but does not include and also includes~~ vehicles and other conveyances whose primary purpose is transportation of persons or property ~~unless such vehicle or conveyance, or a section thereof, is also a dwelling place.~~

Sec. 2. 17-A MRSA § 104, sub-§§ 3 and 4, as enacted by PL 1975, c. 740, § 26, are amended to read:

3. A person in possession or control of a ~~dwelling place~~ structure or a person who is licensed or privileged to be therein is justified in using deadly force upon another:

A. Under the circumstances enumerated in section 108; or

B. When he reasonably believes that deadly force is necessary to prevent or terminate the commission of a criminal ~~trespass~~ act by such other person, who he reasonably believes;

(1) Has entered or is attempting to enter the ~~dwelling place structure~~ or has surreptitiously remained within the ~~dwelling place structure~~ without a license or privilege to do so; and

(2) Is committing or is likely to commit some other crime within the ~~dwelling place structure~~.

4. A person may use deadly force under subsection 3, paragraph B, only if he first demands the person against whom such deadly force is to be used to terminate the ~~criminal trespass act~~ and the other person fails to immediately comply with the demand, unless he reasonably believes that it would be dangerous to himself or another to make the demand.

Sec. 3. 17-A MRSA § 104, sub-§ 5, ¶ A, as enacted by PL 1975, c. 740, § 26, is amended to read:

A. ~~Dwelling place Structure~~ has the same meaning provided in section 2, subsection 10; and

Sec. 4. 17-A MRSA § 105, as amended by PL 1975, c. 740, § 27, is repealed and the following enacted in its place:

§ 105. Use of force in property offenses

1. A person is justified in using a reasonable degree of nondeadly force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking.

2. A person is justified in using deadly force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking, only if he first demands the person against whom such deadly force is to be used to terminate the criminal act and the other person fails to immediately comply with the demand, unless he reasonably believes that it would be dangerous to himself or another to make the demand.

STATEMENT OF FACT

The purpose of this bill is to allow a person to protect his property in accordance with the Constitution of Maine, Article I, Section 1.

Under present Title 17-A, section 104, the use of deadly force to protect property is confined to the "dwelling place," which is only the "living quarters," not a garage, shed, barn or store. So the dwelling place must be changed to "structure" to include these important places.

Under Title 17-A, section 2, this still would not include protection for property within a car, truck, bus, etc., so by changing "does not include vehicles" to "also includes vehicles" and by striking out the requirement that such vehicles be

dwelling places this would be accomplished.

Section 4 of this bill would replace the authorization to use deadly force only under circumstances in Title 17-A, sections 104, 107 and 108 and would allow it to be used to prevent property from being stolen or vandalized.