

JAN 17 2020

A BILL FOR AN ACT

RELATING TO CRIME.

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 criminal prosecution. Defendants charged with a
5 crime can face tens of thousands or hundreds of thousands of
6 dollars in attorney's fees, court costs, lost wages, and other
7 expenses. This financial burden is unfair for a person who is
8 charged with a crime and subsequently found not guilty because
9 of defense of self, others, or property. Such situations can
10 lead to financial hardships, bankruptcy, and other hardships
11 that these individuals do not deserve to bear.

12 The purpose of this Act is to provide reimbursement of
13 reasonable legal costs to defendants when the defendant is found
14 not guilty due to the justifiable use of force to protect
15 themselves, others, or property under certain circumstances.



1 SECTION 2. 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 the use of
5 force upon or toward another person is justifiable pursuant to
6 sections 703-304, 703-305, or 703-306, the actor shall not be
7 charged with an offense.

8 (2) If a person charged with an offense under sections
9 707-701.5, 707-702, 707-702.5, 707-703, 707-704, 707-705, 707-
10 706, 707-710, 707-711, 707-712, 707-713, 707-714, 707-716, 707-
11 717, 707-720, 707-721, or 707-722 is found not guilty because
12 the use of force upon or toward another person is justifiable
13 pursuant to sections 703-304, 703-305, or 703-306, the State
14 shall reimburse the defendant for all reasonable costs,
15 including lost wages; legal costs and fees, including those for
16 appeals; and other expenses involved in the defendant's defense.
17 The reimbursement shall not be an independent cause of action.
18 For a defendant to be entitled to an award of reasonable costs,
19 the trier of fact shall find by a preponderance of evidence that
20 the defendant's claim of use of force upon or toward another
21 person is justifiable pursuant to sections 703-304, 703-305, or



1 703-306. If the trier of fact makes such a finding, the court
2 shall determine the amount of the award.

3 (3) Notwithstanding a finding by the trier of fact that
4 the defendant's claim of use of force upon or toward another
5 person is justifiable pursuant to sections 703-304, 703-305, or
6 703-306, if the trier of fact also finds that the defendant was
7 engaged in criminal conduct substantially related to the events
8 giving rise to the charges against the defendant, the court may
9 deny or reduce the amount of the award. In determining the
10 amount of the award, the court shall also consider the severity
11 of the criminal conduct.

12 This section shall not be deemed to preclude the
13 legislature from paying a claim to the defendant where no award
14 was granted by the court or from paying a claim higher than the
15 award granted by the court.

16 (4) Whenever the issue of whether the defendant's use of
17 force upon or toward another person is justifiable pursuant to
18 sections 703-304, 703-305, or 703-306 and is determined by a
19 jury which found the defendant not guilty, the court shall
20 instruct the jury to return a special verdict in substantially
21 the following form:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Answer

"Yes" or "No"

1. Was the finding of not guilty based upon self-defense?
2. If your answer to question 1 is "no", do not answer the remaining questions.
3. If your answer to question 1 is "yes", was the defendant:
 - a. Protecting himself or herself?
 - b. Protecting another, including his or her family?
 - c. Protecting his or her property?
 - d. Engaged in criminal conduct substantially related to the events giving rise to the crime with which the defendant is charged?

(5) Whenever the issue of whether the defendant's use of force upon or toward another person is justifiable pursuant to sections 703-304, 703-305, or 703-306 and is determined by the court which found the defendant not guilty, the court shall consider the same questions identified in subsection (4)."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.



S.B. NO. 2728

1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY:





S.B. NO. 2728

Report Title:

Crime; Protection of Self, Others, or Property; Reimbursement

Description:

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.

