

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1797
99TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 30, 2018, with recommendation that the Senate Committee Substitute do pass.

5155S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 563.011, 563.041, 569.010, and 569.140, RSMo, and to enact in lieu thereof four new sections relating to unlawful activity on nuclear power plant property, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 563.011, 563.041, 569.010, and 569.140, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 563.011, 563.041, 569.010, and 569.140, to read as follows:

563.011. As used in this chapter the following terms shall mean:

2 (1) **"Armed nuclear security guard", a security guard who works**
3 **at a nuclear power plant, who is employed as part of the security plan**
4 **approved by the United States Nuclear Regulatory Commission, and**
5 **who meets the requirements mandated by the United States Nuclear**
6 **Regulatory Commission for carrying a firearm;**

7 (2) "Deadly force", physical force which the actor uses with the purpose
8 of causing or which he or she knows to create a substantial risk of causing death
9 or serious physical injury;

10 [(2)] (3) "Dwelling", any building, inhabitable structure, or conveyance
11 of any kind, whether the building, inhabitable structure, or conveyance is
12 temporary or permanent, mobile or immobile, which has a roof over it, including
13 a tent, and is designed to be occupied by people lodging therein at night;

14 [(3)] (4) "Forcible felony", any felony involving the use or threat of
15 physical force or violence against any individual, including but not limited to
16 murder, robbery, burglary, arson, kidnapping, assault, and any forcible sexual

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 offense;

18 [(4)] (5) "Premises", includes any building, inhabitable structure and any
19 real property;

20 [(5)] (6) "Private person", any person other than a law enforcement
21 officer;

22 [(6)] (7) "Private property", any real property in this state that is
23 privately owned or leased;

24 [(7)] (8) "Remain after unlawfully entering", to remain in or upon
25 premises after unlawfully entering as defined in this section;

26 [(8)] (9) "Residence", a dwelling in which a person resides either
27 temporarily or permanently or is visiting as an invited guest;

28 [(9)] (10) **"Structure or fenced yard", any structure, fenced yard,
29 wall, building, other similar barrier, or any combination of the
30 foregoing that is part of a nuclear power plant and that is posted with
31 signage indicating it is a felony to trespass;**

32 (11) "Unlawfully enter", a person unlawfully enters in or upon premises
33 or private property when he or she enters such premises or private property and
34 is not licensed or privileged to do so. A person who, regardless of his or her
35 purpose, enters in or upon private property or premises that are at the time open
36 to the public does so with license unless he or she defies a lawful order not to
37 enter, personally communicated to him or her by the owner of such premises or
38 by another authorized person. A license to enter in a building that is only partly
39 open to the public is not a license to enter in that part of the building that is not
40 open to the public.

563.041. 1. A person may, subject to the limitations of subsection 2, use
2 physical force upon another person when and to the extent that he or she
3 reasonably believes it necessary to prevent what he or she reasonably believes to
4 be the commission or attempted commission by such person of stealing, property
5 damage or tampering in any degree.

6 2. A person may use deadly force under circumstances described in
7 subsection 1 only when such use of deadly force is authorized under other sections
8 of this chapter.

9 3. The justification afforded by this section extends to the use of physical
10 restraint as protective force provided that the actor takes all reasonable measures
11 to terminate the restraint as soon as it is reasonable to do so.

12 4. **An armed nuclear security guard may use the following levels**

13 of physical force against another person at a nuclear power plant or
14 within a structure or fenced yard of a nuclear power plant if the armed
15 nuclear security guard reasonably believes that such force is necessary:

16 (1) An armed nuclear security guard may use physical force, as
17 he or she reasonably believes is immediately necessary, up to and
18 including deadly physical force to:

19 (a) Prevent an action that would constitute murder in the first
20 or second degree under section 565.020 or 565.021;

21 (b) Prevent an action that would constitute voluntary
22 manslaughter under section 565.023;

23 (c) Prevent an action that would constitute assault in the first or
24 second degree under section 565.050 or 565.052; or

25 (d) Defend himself, herself, or a third person from the use or
26 imminent use of deadly physical force;

27 (2) An armed nuclear security guard may use physical force, as
28 he or she reasonably believes is immediately necessary, up to but not
29 including deadly physical force to prevent an action that would
30 constitute:

31 (a) Assault in the third or fourth degree under section 565.054 or
32 565.056;

33 (b) Kidnapping in the first, second, or third degree under section
34 565.110, 565.120, or 565.130;

35 (c) Burglary in the first or second degree under section 569.160
36 or 569.170;

37 (d) Arson in the first, second, or third degree under section
38 569.040, 569.050, or 569.053;

39 (e) Property damage in the first degree under section 569.100;

40 (f) Robbery in the first or second degree under section 570.023
41 or 570.025;

42 (g) Armed criminal action under section 571.015; or

43 (h) Trespass in the first degree under section 569.140;

44 (3) An armed nuclear security guard is justified in threatening
45 to use physical force or deadly physical force if and to the extent a
46 reasonable armed nuclear security guard believes it necessary to
47 protect himself, herself, or others against another person's potential
48 use of physical force or deadly physical force.

49 5. Notwithstanding any provisions of section 563.016 to the

50 **contrary, an armed nuclear security guard, employer of an armed**
51 **nuclear security guard, or owner of a nuclear power plant shall not be**
52 **subject to civil liability for conduct of an armed nuclear security guard**
53 **that is permitted by this section.**

54 **6.** The defendant shall have the burden of injecting the issue of
55 justification under this section.

569.010. As used in this chapter the following terms mean:

2 (1) "Cave or cavern", any naturally occurring subterranean cavity
3 enterable by a person including, without limitation, a pit, pothole, natural well,
4 grotto, and tunnel, whether or not the opening has a natural entrance;

5 (2) "Enter unlawfully or remain unlawfully", a person enters or remains
6 in or upon premises when he or she is not licensed or privileged to do so. A
7 person who, regardless of his or her purpose, enters or remains in or upon
8 premises which are at the time open to the public does so with license and
9 privilege unless he or she defies a lawful order not to enter or remain, personally
10 communicated to him or her by the owner of such premises or by other authorized
11 person. A license or privilege to enter or remain in a building which is only
12 partly open to the public is not a license or privilege to enter or remain in that
13 part of the building which is not open to the public;

14 (3) **"Nuclear power plant", a power generating facility that**
15 **produces electricity by means of a nuclear reactor owned by a utility**
16 **or a consortium utility. "Nuclear power plant" shall include the real**
17 **property on which the plant is located;**

18 (4) "To tamper", to interfere with something improperly, to meddle with
19 it, displace it, make unwarranted alterations in its existing condition, or to
20 deprive, temporarily, the owner or possessor of that thing;

21 [(4)] (5) "Utility", an enterprise which provides gas, electric, steam,
22 water, sewage disposal, or communication, video, internet, or voice over internet
23 protocol services, and any common carrier. It may be either publicly or privately
24 owned or operated.

569.140. 1. A person commits the offense of trespass in the first degree
2 if he or she knowingly enters unlawfully or knowingly remains unlawfully in a
3 building or inhabitable structure or upon real property.

4 2. A person does not commit the offense of trespass in the first degree by
5 entering or remaining upon real property unless the real property is fenced or
6 otherwise enclosed in a manner designed to exclude intruders or as to which

7 notice against trespass is given by:

8 (1) Actual communication to the actor; or

9 (2) Posting in a manner reasonably likely to come to the attention of
10 intruders.

11 3. The offense of trespass in the first degree is a class B misdemeanor,
12 unless the victim is intentionally targeted as a law enforcement officer, as defined
13 in section 556.061, or the victim is targeted because he or she is a relative within
14 the second degree of consanguinity or affinity to a law enforcement officer, in
15 which case it is a class A misdemeanor. **If the building or real property is**
16 **part of a nuclear power plant, the offense of trespass in the first degree**
17 **is a class E felony.**

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