

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 241

1 AN ACT TO AMEND SECTION 97-3-15, MISSISSIPPI CODE OF 1972, TO
2 DEFINE "DWELLING," TO CREATE A PRESUMPTION OF THE RIGHT TO USE
3 DEFENSIVE FORCE, TO SPECIFY WHEN NO DUTY TO RETREAT EXISTS, AND TO
4 PROVIDE IMMUNITY FROM CRIMINAL PROSECUTION UNDER CERTAIN
5 CIRCUMSTANCES AS THEY RELATE TO JUSTIFIABLE HOMICIDE; AND FOR
6 RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 97-3-15, Mississippi Code of 1972, is
9 amended as follows:

10 97-3-15. (1) The killing of a human being by the act,
11 procurement, or omission of another shall be justifiable in the
12 following cases:

13 (a) When committed by public officers, or those acting
14 by their command in their aid and assistance, in obedience to any
15 judgment of a competent court;

16 (b) When necessarily committed by public officers, or
17 those acting by their command in their aid and assistance, in
18 overcoming actual resistance to the execution of some legal
19 process, or to the discharge of any other legal duty;

20 (c) When necessarily committed by public officers, or
21 those acting by their command in their aid and assistance, in
22 retaking any felon who has been rescued or has escaped;

23 (d) When necessarily committed by public officers, or
24 those acting by their command in their aid and assistance, in
25 arresting any felon fleeing from justice;

26 (e) When committed by any person in resisting any
27 attempt unlawfully to kill such person or to commit any felony
28 upon him, or upon or in any dwelling or in any occupied vehicle in
29 which such person shall be:

30 (i) For purposes of this paragraph, "dwelling"
31 means a building or conveyance of any kind that has a roof over
32 it, whether the building or conveyance is temporary or permanent,
33 mobile or immobile, including a tent, that is designed to be
34 occupied by people lodging therein at night, including any
35 attached porch;

36 (ii) A person who uses defensive force shall be
37 presumed to have reasonably feared imminent death or great bodily
38 harm, or the commission of a felony upon him or upon his dwelling,
39 or against a vehicle in which he was, if the person against whom
40 the defensive force was used was in the process of unlawfully and
41 forcibly entering, or had unlawfully and forcibly entered, a
42 dwelling or occupied vehicle, or if that person had removed or was
43 attempting to remove another against the other person's will from
44 that dwelling or occupied vehicle, and the person who used
45 defensive force knew or had reason to believe that the forcible
46 entry or unlawful and forcible act was occurring or had occurred.
47 This presumption shall not apply if the person against whom
48 defensive force was used has a right to be in or is a lawful
49 resident or owner of the dwelling or vehicle, or is the lawful
50 resident or owner of the dwelling or vehicle, or if the person who
51 uses defensive force is engaged in unlawful activity;

52 (f) When committed in the lawful defense of one's own
53 person or any other human being, where there shall be reasonable
54 ground to apprehend a design to commit a felony or to do some
55 great personal injury, and there shall be imminent danger of such
56 design being accomplished;

57 (g) When necessarily committed in attempting by lawful
58 ways and means to apprehend any person for any felony committed;

59 (h) When necessarily committed in lawfully suppressing
60 any riot or in lawfully keeping and preserving the peace.

61 (2) As used in paragraphs (1)(c) and (1)(d) of this section,
62 the term "when necessarily committed" means that a public officer

63 or a person acting by or at the officer's command, aid or
64 assistance is authorized to use such force as necessary in
65 securing and detaining the felon offender, overcoming the
66 offender's resistance, preventing the offender's escape,
67 recapturing the offender if the offender escapes or in protecting
68 himself or others from bodily harm; but such officer or person
69 shall not be authorized to resort to deadly or dangerous means
70 when to do so would be unreasonable under the circumstances. The
71 public officer or person acting by or at the officer's command may
72 act upon a reasonable apprehension of the surrounding
73 circumstances; however, such officer or person shall not use
74 excessive force or force that is greater than reasonably necessary
75 in securing and detaining the offender, overcoming the offender's
76 resistance, preventing the offender's escape, recapturing the
77 offender if the offender escapes or in protecting himself or
78 others from bodily harm.

79 (3) As used in paragraphs (1)(c) and (1)(d) of this section,
80 the term "felon" shall include an offender who has been convicted
81 of a felony and shall also include an offender who is in custody,
82 or whose custody is being sought, on a charge or for an offense
83 which is punishable, upon conviction, by death or confinement in
84 the Penitentiary.

85 (4) A person who is not the initial aggressor and is not
86 engaged in unlawful activity shall have no duty to retreat before
87 using deadly force under subsection (1)(e) or (1)(f) of this
88 section if the person is in a place where the person has a right
89 to be, and no finder of fact shall be permitted to consider the
90 person's failure to retreat as evidence that the person's use of
91 force was unnecessary, excessive or unreasonable.

92 (5) A person using deadly force in accordance with the
93 provisions of subsection (1)(e) or (1)(f) shall be immune from
94 criminal prosecution for the use of such force and shall be immune
95 from any civil liability for injuries or death resulting from the

96 use of force. The presumptions contained in subsection (1)(e) and
97 (1)(f) shall apply in civil cases in which self-defense is claimed
98 as a defense.

99 **SECTION 2.** This act shall take effect and be in force from
100 and after July 1, 2006.