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To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2426

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, TO
4 PROVIDE IMMUNITY FROM CRIMINAL PROSECUTION UNDER CERTAIN
5 CIRCUMSTANCES AS THEY RELATE TO JUSTIFIABLE HOMICIDE, AND TO
6 PROVIDE INDEMNIFICATION FOR CERTAIN LEGAL EXPENSES; AND FOR
7 RELATED PURPOSES.

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

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

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

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

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

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

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

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

30 building of a business during hours when the business is closed to
31 the public in which such person shall be;

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

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

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

41 (2) (a) As used in subsection (1)(c) and * * * (d) of this
42 section, the term "when necessarily committed" means that a public
43 officer or a person acting by or at the officer's command, aid or
44 assistance is authorized to use such force as necessary in
45 securing and detaining the felon offender, overcoming the
46 offender's resistance, preventing the offender's escape,
47 recapturing the offender if the offender escapes or in protecting
48 himself or others from bodily harm; but such officer or person
49 shall not be authorized to resort to deadly or dangerous means
50 when to do so would be unreasonable under the circumstances. The
51 public officer or person acting by or at the officer's command may
52 act upon a reasonable apprehension of the surrounding
53 circumstances; however, such officer or person shall not use
54 excessive force or force that is greater than reasonably necessary
55 in securing and detaining the offender, overcoming the offender's
56 resistance, preventing the offender's escape, recapturing the
57 offender if the offender escapes or in protecting himself or
58 others from bodily harm.

59 (b) As used in subsection (1)(c) and * * * (d) of this
60 section the term "felon" shall include an offender who has been
61 convicted of a felony and shall also include an offender who is in
62 custody, or whose custody is being sought, on a charge or for an

63 offense which is punishable, upon conviction, by death or
64 confinement in the penitentiary.

65 (c) As used in subsections (1)(e) and (3) of this
66 section, "dwelling" means a building or conveyance of any kind
67 that has a roof over it, whether the building or conveyance is
68 temporary or permanent, mobile or immobile, including a tent, that
69 is designed to be occupied by people lodging therein at night,
70 including any attached porch;

71 (3) A person who uses defensive force shall be presumed to
72 have reasonably feared imminent death or great bodily harm, or the
73 commission of a felony upon him or another or upon his dwelling, a
74 vehicle which he was occupying or the building of a business
75 during hours when the business is closed to the public, if the
76 person against whom the defensive force was used was in the
77 process of unlawfully and forcibly entering, or had unlawfully and
78 forcibly entered, a dwelling, occupied vehicle or the building of
79 a business during hours when the business is closed to the public,
80 or if that person had unlawfully removed or was attempting to
81 unlawfully remove another against the other person's will from
82 that dwelling, occupied vehicle or the building of a business
83 during hours when the business is closed to the public, and the
84 person who used defensive force knew or had reason to believe that
85 the forcible entry or unlawful and forcible act was occurring or
86 had occurred. This presumption shall not apply if the person
87 against whom defensive force was used has a right to be in or is a
88 lawful resident or owner of the dwelling or vehicle, or is the
89 lawful employee or owner of the business or the building of the
90 business, or if the person who uses defensive force is engaged in
91 unlawful activity;

92 (4) A person who is not the initial aggressor and is not
93 engaged in unlawful activity shall have no duty to retreat before
94 using deadly force under subsection (1)(e) or (f) of this section
95 if the person is in a place where the person has a right to be,

96 and no finder of fact shall be permitted to consider the person's
97 failure to retreat as evidence that the person's use of force was
98 unnecessary, excessive or unreasonable.

99 (5) (a) A person using deadly force in accordance with the
100 provisions of subsection (1)(e) or (f) of this section shall be
101 immune from criminal prosecution for the use of such force and
102 shall be immune from any civil liability for injuries or death
103 resulting from the use of force. The presumptions contained in
104 subsection (1)(e) and (f) of this section shall apply in civil
105 cases in which self-defense or defense of another is claimed as a
106 defense.

107 (b) The court shall award reasonable attorney's fees,
108 court costs, compensation for loss of income, and all expenses
109 incurred by the defendant in defense of any civil action brought
110 by a plaintiff if the court finds that the defendant is immune
111 from prosecution as provided in this subsection (5).

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