

By: Senator(s) Tollison

To: Judiciary, Division A

SENATE BILL NO. 2954

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 OR ANY CIVIL LIABILITY
5 UNDER CERTAIN CIRCUMSTANCES AS THEY RELATE TO JUSTIFIABLE
6 HOMICIDE; AND FOR 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 aid and assistance, in obedience to any judgment of a
15 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 which he was occupying, if the person against
40 whom the defensive force was used, was in the process of
41 unlawfully and forcibly entering, or had unlawfully and forcibly
42 entered, a dwelling or occupied vehicle, or if that person had
43 removed or was attempting to remove another against the other
44 person's will from that dwelling or occupied vehicle, and the
45 person who used defensive force knew or had reason to believe that
46 the forcible entry or unlawful and forcible act was occurring or
47 had occurred. This presumption shall apply even if the person
48 against whom the defensive force was used was in retreat. This
49 presumption shall not apply if the person against whom defensive
50 force was used has a right to be in or is a lawful resident or
51 owner of the dwelling or vehicle, or is the lawful resident or
52 owner of the dwelling or vehicle, or if the person who uses
53 defensive force is engaged in unlawful activity;

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

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

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

63 (2) As used in subsection (1)(c) and (1)(d) of this section,
64 the term "when necessarily committed" means that a public officer
65 or a person acting by or at the officer's command, aid or
66 assistance is authorized to use such force as necessary in
67 securing and detaining the felon offender, overcoming the
68 offender's resistance, preventing the offender's escape,
69 recapturing the offender if the offender escapes or in protecting
70 himself or others from bodily harm; but such officer or person
71 shall not be authorized to resort to deadly or dangerous means
72 when to do so would be unreasonable under the circumstances. The
73 public officer or person acting by or at the officer's command may
74 act upon a reasonable apprehension of the surrounding
75 circumstances; however, such officer or person shall not use
76 excessive force or force that is greater than reasonably necessary
77 in securing and detaining the offender, overcoming the offender's
78 resistance, preventing the offender's escape, recapturing the
79 offender if the offender escapes or in protecting himself or
80 others from bodily harm.

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

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

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

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