

By: Senator(s) Flowers

To: Judiciary, Division A

SENATE BILL NO. 2973

1 AN ACT TO CREATE NEW SECTION 97-3-15.1, MISSISSIPPI CODE OF
 2 1972, TO SET FORTH PARAMETERS FOR CIRCUMSTANCES IN WHICH USE OF
 3 FORCE IN DEFENSE OF PERSON IS JUSTIFIABLE; TO CREATE NEW SECTION
 4 97-3-15.2, MISSISSIPPI CODE OF 1972, TO SET FORTH PARAMETERS FOR
 5 CIRCUMSTANCES IN WHICH USE OF FORCE IN DEFENSE OF HOME IS
 6 JUSTIFIABLE; TO CREATE NEW SECTION 97-3-15.3, MISSISSIPPI CODE OF
 7 1972, TO SET FORTH PARAMETERS FOR CIRCUMSTANCES IN WHICH USE OF
 8 FORCE IN DEFENSE OF OTHERS IS JUSTIFIABLE; TO CREATE NEW SECTION
 9 97-3-15.4, MISSISSIPPI CODE OF 1972, CREATE IMMUNITY FROM CRIMINAL
 10 PROSECUTION AND CIVIL LIABILITY FOR JUSTIFIABLE USE OF FORCE; TO
 11 CREATE NEW SECTION 97-3-15.5, MISSISSIPPI CODE OF 1972, TO SET
 12 FORTH PARAMETERS FOR CIRCUMSTANCES IN WHICH USE OF FORCE BY AN
 13 AGGRESSOR RENDERS THE JUSTIFICATIONS UNAVAILABLE; AND FOR RELATED
 14 PURPOSES.

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

16 **SECTION 1.** The following shall be codified as Section
 17 97-3-15.1, Mississippi Code of 1972:

18 97-3-15.1. **Use of force in defense of person.** A person is
 19 justified in using force, except deadly force, against another
 20 when and to the extent that the person reasonably believes that
 21 such force is necessary to defend himself or herself or another
 22 against the other's imminent use of unlawful force. However, a
 23 person is justified in the use of deadly force and does not have a
 24 duty to retreat if:

25 (a) He or she reasonably believes that such force is
 26 necessary to prevent imminent death or great bodily harm to
 27 himself or herself or another or to prevent the imminent
 28 commission of a forcible felony; or

29 (b) Under those circumstances permitted pursuant to
 30 Section 97-3-15.2.

31 **SECTION 2.** The following shall be codified as Section
 32 97-3-15.2, Mississippi Code of 1972:

33 97-3-15.2. **Home protection; use of deadly force; presumption**
34 **of fear of death or great bodily harm.** (1) A person is presumed
35 to have held a reasonable fear of imminent peril of death or great
36 bodily harm to himself or herself or another when using defensive
37 force that is intended or likely to cause death or great bodily
38 harm to another if:

39 (a) The person against whom the defensive force was
40 used was in the process of unlawfully and forcefully entering, or
41 had unlawfully and forcibly entered, a dwelling, residence or
42 occupied vehicle, or if that person had removed or was attempting
43 to remove another against that person's will from the dwelling,
44 residence or occupied vehicle; and

45 (b) The person who uses defensive force knew or had
46 reason to believe that an unlawful and forcible entry or unlawful
47 and forcible act was occurring or had occurred.

48 (2) The presumption set forth in subsection (1) does not
49 apply if:

50 (a) The person against whom the defensive force is used
51 has the right to be in or is a lawful resident of the dwelling,
52 residence or vehicle, such as an owner, lessee or titleholder, and
53 there is not an injunction for protection from domestic violence
54 or a written pretrial supervision order of no contact against that
55 person; or

56 (b) The person or persons sought to be removed is a
57 child or grandchild, or is otherwise in the lawful custody or
58 under the lawful guardianship of, the person against whom the
59 defensive force is used; or

60 (c) The person who uses defensive force is engaged in
61 an unlawful activity or is using the dwelling, residence or
62 occupied vehicle to further an unlawful activity; or

63 (d) The person against whom the defensive force is used
64 is a law enforcement officer, as defined in Section 45-6-3, who
65 enters or attempts to enter a dwelling, residence or vehicle in

66 the performance of his or her official duties and the officer
67 identified himself or herself in accordance with any applicable
68 law or the person using force knew or reasonably should have known
69 that the person entering or attempting to enter was a law
70 enforcement officer.

71 (3) A person who is not engaged in an unlawful activity and
72 who is attacked in any other place where he or she has a right to
73 be has no duty to retreat and has the right to stand his or her
74 ground and meet force with force, including deadly force if he or
75 she reasonably believes it is necessary to do so to prevent death
76 or great bodily harm to himself or herself or another or to
77 prevent the commission of a forcible felony.

78 (4) A person who unlawfully and by force enters or attempts
79 to enter a person's dwelling, residence or occupied vehicle is
80 presumed to be doing so with the intent to commit an unlawful act
81 involving force or violence.

82 (5) As used in this section, the term:

83 (a) "Dwelling" means a building or conveyance of any
84 kind, including any attached porch, whether the building or
85 conveyance is temporary or permanent, mobile or immobile, which
86 has a roof over it, including a tent, and is designed to be
87 occupied by people lodging therein at night.

88 (b) "Residence" means a dwelling in which a person
89 resides either temporarily or permanently or is visiting as an
90 invited guest.

91 (c) "Vehicle" means a conveyance of any kind, whether
92 or not motorized, which is designed to transport people or
93 property.

94 **SECTION 3.** The following shall be codified as Section
95 97-3-15.3, Mississippi Code of 1972:

96 97-3-15.3. **Use of force in defense of others.** A person is
97 justified in the use of force, except deadly force, against
98 another when and to the extent that the person reasonably believes

99 that such force is necessary to prevent or terminate the other's
100 trespass on, or other tortious or criminal interference with,
101 either real property other than a dwelling or personal property,
102 lawfully in his or her possession or in the possession of another
103 who is a member of his or her immediate family or household or of
104 a person whose property he or she has a legal duty to protect.
105 However, a person is justified in the use of deadly force only if
106 he or she reasonably believes that such force is necessary to
107 prevent the imminent commission of a forcible felony. A person
108 does not have a duty to retreat if the person is in a place where
109 he or she has a right to be.

110 **SECTION 4.** The following shall be codified as Section
111 97-3-15.4, Mississippi Code of 1972:

112 97-3-15.4. **Immunity from criminal prosecution and civil**
113 **action for justifiable use of force.** (1) A person who uses force
114 as permitted in Section 97-3-15.1, 97-3-15.2 or 97-3-15.3 is
115 justified in using such force and is immune from criminal
116 prosecution and civil action for the use of such force, unless the
117 person against whom force was used is a law enforcement officer,
118 as defined in Section 45-6-3, who was acting in the performance of
119 his or her official duties and the officer identified himself or
120 herself in accordance with any applicable law or the person using
121 force knew or reasonably should have known that the person was a
122 law enforcement officer. As used in this subsection, the term
123 "criminal prosecution" includes arresting, detaining in custody,
124 and charging or prosecuting the defendant.

125 (2) A law enforcement agency may use standard procedures for
126 investigating the use of force as described in subsection (1), but
127 the agency may not arrest the person for using force unless it
128 determines that there is probable cause that the force that was
129 used was unlawful.

130 (3) The court shall award reasonable attorney's fees, court
131 costs, compensation for loss of income, and all expenses incurred

132 by the defendant in defense of any civil action brought by a
133 plaintiff if the court finds that the defendant is immune from
134 prosecution as provided in subsection (1).

135 **SECTION 5.** The following shall be codified as Section
136 97-3-15.5, Mississippi Code of 1972:

137 97-3-15.5. The justification described in the preceding
138 sections of this chapter is not available to a person who:

139 (a) Is attempting to commit, committing or escaping
140 after the commission of, a forcible felony; or

141 (b) Initially provokes the use of force against himself
142 or herself, unless:

143 (i) Such force is so great that the person
144 reasonably believes that he or she is in imminent danger of death
145 or great bodily harm and that he or she has exhausted every
146 reasonable means to escape such danger other than the use of force
147 which is likely to cause death or great bodily harm to the
148 assailant; or

149 (ii) In good faith, the person withdraws from
150 physical contact with the assailant and indicates clearly to the
151 assailant that he or she desires to withdraw and terminate the use
152 of force, but the assailant continues or resumes the use of force.

153 **SECTION 6.** This act shall take effect and be in force from
154 and after its passage.