

By: Senator(s) White

To: Judiciary, Division A

SENATE BILL NO. 2179

1 AN ACT TO PROVIDE IMMUNITY FROM CIVIL SUITS FOR USE OF FORCE
2 AGAINST ONE CONVICTED OF A FORCIBLE FELONY; TO ENACT DEFINITIONS;
3 TO SPECIFY THE PERMISSIBLE USE OF FORCE IN DEFENSE OF SELF AND
4 OTHERS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** (1) For the purposes of this act:

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

12 (b) "Residence" means a dwelling in which a person
13 resides either temporarily or permanently or is visiting as an
14 invited guest.

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

18 (d) "Forcible felony" means murder; manslaughter; rape;
19 sexual battery; carjacking; robbery; burglary; arson; kidnapping;
20 aggravated assault; drive-by shooting; drive-by bombing; felony
21 stalking; aircraft piracy; and any other felony which involves the
22 use or threat of physical force or violence against any
23 individual.

24 (2) A person is justified in using force, except deadly
25 force, against another when and to the extent that the person
26 reasonably believes that such conduct is necessary to defend
27 himself or herself or another against the other's imminent use of
28 unlawful force. However, a person is justified in the use of

29 deadly force and does not have a duty to retreat if he reasonably
30 believes that such force is necessary to prevent imminent death or
31 great bodily harm to himself or another or to prevent the imminent
32 commission of a forcible felony.

33 (a) A person is presumed to have held a reasonable fear
34 of imminent peril of death or great bodily harm to himself or
35 another when using defensive force that is intended or likely to
36 cause death or great bodily harm to another if:

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

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

46 (b) The presumption set forth in paragraph (a) does not
47 apply if:

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

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

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

61 (iv) The person against whom the defensive force
62 is used is a law enforcement officer who enters or attempts to
63 enter a dwelling, residence, or vehicle in the performance of his
64 official duties and the officer identified himself in accordance
65 with any applicable law or the person using force knew or
66 reasonably should have known that the person entering or
67 attempting to enter was a law enforcement officer.

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

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

79 (3) A person is justified in the use of force, except deadly
80 force, against another when and to the extent that the person
81 reasonably believes that such conduct is necessary to prevent or
82 terminate the other's trespass on, or other tortious or criminal
83 interference with, either real property other than a dwelling or
84 personal property, lawfully in his possession or in the possession
85 of another who is a member of his immediate family or household or
86 of a person whose property he has a legal duty to protect.
87 However, the person is justified in the use of deadly force only
88 if he reasonably believes that such force is necessary to prevent
89 the imminent commission of a forcible felony. A person does not
90 have a duty to retreat if the person is in a place where he has a
91 right to be.

92 (4) It shall be a defense to any action for damages for
93 personal injury or wrongful death, or for injury to property, that

94 such action arose from injury sustained by a participant during
95 the commission or attempted commission of a forcible felony. The
96 defense authorized by this subsection shall be established by
97 evidence that the participant has been convicted of such forcible
98 felony or attempted forcible felony, or by proof of the commission
99 of such crime or attempted crime by a preponderance of the
100 evidence.

101 (a) Any civil action in which the defense recognized by
102 this subsection is raised shall be stayed by the court on the
103 motion of the civil defendant during the pendency of any criminal
104 action which forms the basis for the defense, unless the court
105 finds that a conviction in the criminal action would not form a
106 valid defense under this subsection.

107 (b) In any civil action where a party prevails based on
108 the defense created by this section:

109 (i) The losing party, if convicted of and
110 incarcerated for the crime or attempted crime, shall, as
111 determined by the court, lose any privileges provided by the
112 correctional facility, including, but not limited to:

- 113 1. Canteen purchases;
- 114 2. Telephone access;
- 115 3. Outdoor exercise;
- 116 4. Use of the library; and
- 117 5. Visitation.

118 (c) The court shall award a reasonable attorney's fee
119 to be paid to the prevailing party in equal amounts by the losing
120 party and the losing party's attorney; however, the losing party's
121 attorney is not personally responsible if he has acted in good
122 faith, based on the representations of the client. If the losing
123 party is incarcerated for the crime or attempted crime and has
124 insufficient assets to cover payment of the costs of the action
125 and the award of fees pursuant to this paragraph, the party shall,

126 as determined by the court, be required to pay by deduction from
127 any payments the prisoner receives while incarcerated.

128 (d) If the losing party is incarcerated for the crime
129 or attempted crime, the court shall issue a written order
130 containing its findings and ruling pursuant to paragraphs (a) and
131 (b) and shall direct that a certified copy be forwarded to the
132 appropriate correctional institution or facility.

133 **SECTION 2.** This act shall take effect and be in force from
134 and after July 1, 2007.