

By: Senator(s) England

To: Judiciary, Division B

SENATE BILL NO. 2538

1 AN ACT TO AMEND SECTION 97-3-15, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT A PERSON WHO USES OR THREATENS TO USE FORCE AS
 3 PERMITTED IN THIS SECTION IS JUSTIFIED AND IS IMMUNE FROM CRIMINAL
 4 PROSECUTION AND CIVIL ACTION; TO AUTHORIZE A LAW ENFORCEMENT
 5 AGENCY TO INVESTIGATE THE USE OF FORCE; TO PROHIBIT A LAW
 6 ENFORCEMENT AGENCY FROM ARRESTING THE PERSON WHO USED THE FORCE OR
 7 THREATENED TO USE THE FORCE UNLESS THE AGENCY DETERMINES THAT
 8 THERE IS PROBABLE CAUSE THAT THE FORCE THAT USED OR THREATENED WAS
 9 UNLAWFUL; TO REQUIRE THE COURT TO AWARD CERTAIN DAMAGES INCURRED
 10 BY THE DEFENDANT IN DEFENSE OF ANY CIVIL ACTION BROUGHT BY A
 11 PLAINTIFF IF THE COURT FINDS THAT THE DEFENDANT IS IMMUNE FROM
 12 CRIMINAL PROSECUTION UNDER THIS SECTION; AND FOR RELATED PURPOSES.

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

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

16 97-3-15. (1) The killing of a human being by the act,
 17 procurement or omission of another shall be justifiable in the
 18 following cases:

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

22 (b) When necessarily committed by public officers, or
 23 those acting by their command in their aid and assistance, in



24 overcoming actual resistance to the execution of some legal
25 process, or to the discharge of any other legal duty;

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

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

32 (e) When committed by any person in resisting any
33 attempt unlawfully to kill such person or to commit any felony
34 upon him, or upon or in any dwelling, in any occupied vehicle, in
35 any place of business, in any place of employment or in the
36 immediate premises thereof in which such person shall be;

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

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

44 (h) When necessarily committed in lawfully suppressing
45 any riot or in lawfully keeping and preserving the peace; and

46 (i) When necessarily committed in the performance of
47 duty as a member of a church or place of worship security program
48 as described in Section 45-9-171.



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

67 (b) As used in subsection (1)(c) and (d) of this
68 section, the term "felon" shall include an offender who has been
69 convicted of a felony and shall also include an offender who is in
70 custody, or whose custody is being sought, on a charge or for an
71 offense which is punishable, upon conviction, by death or
72 confinement in the Penitentiary.



73 (c) As used in subsections (1)(e) and (3) of this
74 section, "dwelling" means a building or conveyance of any kind
75 that has a roof over it, whether the building or conveyance is
76 temporary or permanent, mobile or immobile, including a tent, that
77 is designed to be occupied by people lodging therein at night,
78 including any attached porch.

79 (3) A person who uses defensive force shall be presumed to
80 have reasonably feared imminent death or great bodily harm, or the
81 commission of a felony upon him or another or upon his dwelling,
82 or against a vehicle which he was occupying, or against his
83 business or place of employment or the immediate premises of such
84 business or place of employment, if the person against whom the
85 defensive force was used, was in the process of unlawfully and
86 forcibly entering, or had unlawfully and forcibly entered, a
87 dwelling, occupied vehicle, business, place of employment or the
88 immediate premises thereof or if that person had unlawfully
89 removed or was attempting to unlawfully remove another against the
90 other person's will from that dwelling, occupied vehicle,
91 business, place of employment or the immediate premises thereof
92 and the person who used defensive force knew or had reason to
93 believe that the forcible entry or unlawful and forcible act was
94 occurring or had occurred. This presumption shall not apply if
95 the person against whom defensive force was used has a right to be
96 in or is a lawful resident or owner of the dwelling, vehicle,
97 business, place of employment or the immediate premises thereof or



98 is the lawful resident or owner of the dwelling, vehicle,
99 business, place of employment or the immediate premises thereof or
100 if the person who uses defensive force is engaged in unlawful
101 activity or if the person is a law enforcement officer engaged in
102 the performance of his official duties.

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

110 (5) (a) A person who uses or threatens to use force as
111 permitted in this section is justified in such conduct and is
112 immune from criminal prosecution and civil action for the use or
113 threatened use of such force by the person, personal
114 representative, or heirs of the person against whom the force was
115 used or threatened, unless the person against whom force was used
116 or threatened is a law enforcement officer, as defined in Section
117 45-6-3, who was acting in the performance of his or her official
118 duties, and the officer identified himself or herself in
119 accordance with any applicable law, or the person using or
120 threatening to use force knew or reasonably should have known that
121 the person was a law enforcement officer. As used in this



122 subsection, the term "criminal prosecution" includes arresting,
123 detaining in custody and charging or prosecuting the defendant.

124 (b) A law enforcement agency may use standard
125 procedures for investigating the use or threatened use of force as
126 described in this section, but the agency may not arrest the
127 person for using or threatening to use force unless it determines
128 that there is probable cause that the force that was used or
129 threatened was unlawful.

130 (c) The court shall award reasonable attorney's fees,
131 court costs, compensation for loss of income, and all expenses
132 incurred by the defendant in defense of any civil action brought
133 by a plaintiff if the court finds that the defendant is immune
134 from criminal prosecution as provided in paragraph (a) of this
135 subsection (5).

136 (* * *6) (a) The presumptions contained in subsection (3)
137 of this section shall apply in civil cases in which self-defense
138 or defense of another is claimed as a defense.

139 (b) The court shall award reasonable attorney's fees,
140 court costs, compensation for loss of income, and all expenses
141 incurred by the defendant in defense of any civil action brought
142 by a plaintiff if the court finds that the defendant acted in
143 accordance with subsection (1)(e) or (f) of this section. A
144 defendant who has previously been adjudicated "not guilty" of any
145 crime by reason of subsection (1)(e) or (f) of this section shall



146 be immune from any civil action for damages arising from the same
147 conduct.

148 **SECTION 2.** This act shall take effect and be in force from
149 and after July 1, 2022.

