

By: Representatives Holland, Reeves, Franks, Akins, Aldridge, Arinder, Baker (74th), Baker (8th), Barnett, Beckett, Bentz, Bondurant, Bounds, Carlton, Chism, Compretta, Cummings, Davis, Dedeaux, Denny, Ellington, Fillingane, Fleming, Formby, Frierson, Gadd, Gregory, Guice, Gunn, Hamilton (109th), Howell, Hudson, Janus, Jennings, Johnson, Lott, Martinson, Masterson, Mayhall, McBride, Miles, Mims, Moak, Montgomery, Moore, Moss, Nicholson, Parker, Patterson, Peranich, Read, Reed, Reynolds, Robinson (84th), Rogers (14th), Rogers (61st), Rotenberry, Shows, Smith (59th), Smith (39th), Snowden, Staples, Stevens, Stringer, Sullivan, Turner, Upshaw, Walley, Ward, Warren, Weathersby, Wells-Smith, Woods

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 882

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, in any occupied vehicle, in  
30 any place of business, in any place of employment or in the  
31 immediate premises thereof 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,  
74 or against a vehicle which he was occupying, or against his  
75 business or place of employment or the immediate premises of such  
76 business or place of employment, if the person against whom the  
77 defensive force was used, was in the process of unlawfully and  
78 forcibly entering, or had unlawfully and forcibly entered, a  
79 dwelling, occupied vehicle, business, place of employment or the  
80 immediate premises thereof or if that person had unlawfully  
81 removed or was attempting to unlawfully remove another against the  
82 other person's will from that dwelling, occupied vehicle,  
83 business, place of employment or the immediate premises thereof  
84 and the person who used defensive force knew or had reason to  
85 believe that the forcible entry or unlawful and forcible act was  
86 occurring or had occurred. This presumption shall not apply if  
87 the person against whom defensive force was used has a right to be  
88 in or is a lawful resident or owner of the dwelling, vehicle,  
89 business, place of employment or the immediate premises thereof or  
90 is the lawful resident or owner of the dwelling, vehicle,  
91 business, place of employment or the immediate premises thereof or  
92 if the person who uses defensive force is engaged in unlawful  
93 activity;

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

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

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

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