MISSISSIPPI LEGISLATURE REGULAR SESSION 2006

By: Senator(s) Ross, Doxey, Albritton, Flowers, White, Jackson (15th), Dearing, King, Carmichael, Mettetal, Brown, Davis, Clarke, Michel, Hyde-Smith, Lee (47th), Wilemon, Lee (35th), Chaney, Kirby, Moffatt, Walley, Browning, Burton, Pickering, Hewes, Posey, Gollott, Gordon, Robertson, Little, Thames

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2426

AN ACT TO AMEND SECTION 97-3-15, MISSISSIPPI CODE OF 1972, TO DEFINE "DWELLING," TO CREATE A PRESUMPTION OF THE RIGHT TO USE DEFENSIVE FORCE, TO SPECIFY WHEN NO DUTY TO RETREAT EXISTS, TO PROVIDE IMMUNITY FROM CRIMINAL PROSECUTION UNDER CERTAIN CIRCUMSTANCES AS THEY RELATE TO JUSTIFIABLE HOMICIDE, AND TO PROVIDE INDEMNIFICATION FOR CERTAIN LEGAL EXPENSES; AND FOR RELATED PURPOSES.

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

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

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

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

(b) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty;

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

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

(e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling<u>, occupied vehicle or the</u>

building of a business during hours when the business is closed to the public in which such person shall be;

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

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

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

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

(b) As used in subsection (1)(c) and * * * (d) of this section the term "felon" shall include an offender who has been convicted of a felony and shall also include an offender who is in custody, or whose custody is being sought, on a charge or for an

offense which is punishable, upon conviction, by death or confinement in the penitentiary.

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

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, a vehicle which he was occupying or the building of a business during hours when the business is closed to the public, if the person against whom the defensive force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle or the building of a business during hours when the business is closed to the public, or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle or the building of a business during hours when the business is closed to the public, and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. This presumption shall not apply if the person against whom defensive force was used has a right to be in or is a lawful resident or owner of the dwelling or vehicle, or is the lawful employee or owner of the business or the building of the business, or if the person who uses defensive force is engaged in unlawful activity;

(4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1)(e) or (f) of this section if the person is in a place where the person has a right to be,

and no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

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

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

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