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To: Judiciary, Division A

SENATE BILL NO. 2426

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 * * * or in any occupied
30 vehicle in which such person shall be;

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

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

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

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

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

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

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

70 (3) A person who uses defensive force shall be presumed to
71 have reasonably feared imminent death or great bodily harm, or the
72 commission of a felony upon him or another or upon his dwelling,
73 or against a vehicle which he was occupying, if the person against
74 whom the defensive force was used, was in the process of
75 unlawfully and forcibly entering, or had unlawfully and forcibly
76 entered, a dwelling or occupied vehicle, or if that person had
77 unlawfully removed or was attempting to unlawfully remove another
78 against the other person's will from that dwelling or occupied
79 vehicle, and the person who used defensive force knew or had
80 reason to believe that the forcible entry or unlawful and forcible
81 act was occurring or had occurred. This presumption shall not
82 apply if the person against whom defensive force was used has a
83 right to be in or is a lawful resident or owner of the dwelling or
84 vehicle, or is the lawful resident or owner of the dwelling or
85 vehicle, or if the person who uses defensive force is engaged in
86 unlawful activity;

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

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

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

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