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BILL ANALYSIS

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House Bill 5142 (Substitute H-1 as passed by the House)
House Bill 5143 (Substitute H-4 as passed by the House)
House Bill 5153 (Substitute H-2 as passed by the House)
House Bill 5548 (Substitute H-1 as passed by the House)

Sponsor: Representative Tom Casperson (H.B. 5142)
Representative Rick Jones (H.B. 5143)
Representative Leslie Mortimer (H.B. 5153)
Representative Tim Moore (H.B. 5548)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 5-15-06

CONTENT

House Bill 5143 (H-4) would create the "Dr. Ossian Sweet Self-Defense Act" to do all of the following:

- Specify that a person could use deadly force against another individual, without a duty to retreat, if he or she actually and reasonably believed that force was necessary to prevent imminent death, bodily harm, or sexual assault.
- Specify that a person could use less-than-lethal force against another individual, without a duty to retreat, if he or she actually and reasonably believed that force was necessary in defense against the other individual's imminent unlawful use of force.
- Establish a rebuttable presumption that a person had an actual and reasonable fear of imminent death, sexual assault, or great bodily harm if certain conditions existed.
- Specify circumstances under which the presumption would not apply.

House Bills 5142 (H-1) and 5153 (H-2) would amend the Code of Criminal Procedure, and **House Bill 5548 (H-1)** would amend the Revised Judicature Act, to do all of the following:

- Establish a defense for a crime involving deadly force that the person acted in lawful self-defense or defense of another.
- Specify that a duty to retreat would not apply to a person's dwelling or the curtilage of those premises.
- Establish criminal and civil immunity for a person who used force in compliance with the proposed Self-Defense Act.

The bills are tie-barred and would take effect on October 1, 2006.

House Bill 5143 (H-4)

Under the proposed Self-Defense Act, an individual could use deadly force against another individual, anywhere he or she had the legal right to be, with no duty to retreat, if the

individual actually and reasonably believed that the use of deadly force was necessary to prevent either of the following:

- The imminent death of, or imminent great bodily harm to, himself or herself or another individual.
- The imminent sexual assault of himself or herself or another individual.

An individual could use force, other than deadly force, against another individual anywhere he or she had the legal right to be, with no duty to retreat, if he or she actually and reasonably believed that the use of force was necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

It would be a rebuttable presumption that an individual who used force under the above provisions had an actual and reasonable fear that imminent death of, sexual assault of, or great bodily harm to himself or herself or another individual would occur, if the individual against whom force was used were in the process of breaking and entering a dwelling or committing home invasion, had broken and entered a dwelling or committed home invasion and were still present in the dwelling, or were unlawfully attempting to remove another individual from a dwelling or occupied vehicle against his or her will, and the individual using force knew or had reason to believe the individual was engaging in that conduct. The rebuttable presumption would not apply, however, if any of the following circumstances existed:

- The individual against whom force was used, including an owner, lessee, or titleholder, had the legal right to be in the dwelling or vehicle and there was not an injunction for protection from domestic violence or a written pretrial supervision order, a probation order, or a parole order of no contact against that person.
- The individual removed or being removed from the dwelling or occupied vehicle was a child or grandchild of, or was otherwise in the lawful custody of or under the lawful guardianship of, the individual against whom force was used.
- The individual who used force was engaged in an unlawful activity or was using the dwelling or occupied vehicle to further an unlawful activity.
- The individual against whom force was used was a peace officer who had entered or was attempting to enter a dwelling or vehicle in the performance of his or her official duties and the peace officer identified himself or herself in accordance with applicable law, or the individual using force knew or reasonably should have known that the individual entering or attempting to enter the dwelling or vehicle was a peace officer.

Under the bill, "dwelling" would mean a building or conveyance of any kind that has a roof over it, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, including a tent, and that is designed to be occupied by people. "Vehicle" would mean a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

House Bill 5142 (H-1)

The bill specifies that it would be a defense to a prosecution for a crime involving the use or attempted use of deadly force that the person acted in lawful self-defense or lawful defense of another person. The duty to retreat before using deadly force would not apply to any premises in which the person was dwelling or to the curtilage of those premises. (According to *Black's Law Dictionary*, Eighth Edition, "curtilage" refers to the land or yard adjoining a house, usually within an enclosure.)

House Bill 5153 (H-2)

Under the bill, an individual who used force in compliance with the proposed Self-Defense Act, and who was not engaged in committing a crime at the time he or she used that force, would be immune from criminal prosecution for the use of that force.

If a prosecutor believed that a person used force that was unjustified under the Self-Defense Act, the prosecutor could charge the person with a crime arising from the use of force and would have to present evidence to the magistrate, at the time a warrant was issued, that established probable cause to believe that the person committed the crime charged and that the person's actions were not justified under the proposed Act.

House Bill 5548 (H-1)

Under the bill, an individual who used force in compliance with the proposed Self-Defense Act, and who was not engaged in committing a crime at the time he or she used that force, would be immune from civil liability for the use of that force. The bill specifies that this provision would not grant immunity for damages caused to an individual other than the one against whom the use of force was authorized under the proposed Act.

The court would have to award the payment of actual and reasonable attorney fees and costs to an individual who was alleged to have used force against another individual, if the court determined that the use of force was in compliance with the Self-Defense Act and that the individual was immune from civil liability under the bill.

Proposed MCL 768.21c (H.B. 5142)
Proposed MCL 767.27 (H.B. 5153)
Proposed MCL 600.2922b (H.B. 5548)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many individuals have been convicted of crimes for using defensive force. Florida, Indiana, Georgia, Alabama, Arizona, and other states have enacted similar legislation, but too recently to determine if there was any fiscal impact. To the extent that the bills would provide criminal immunity not already defined in law for individuals who use defensive force, these individuals would avoid conviction. State and local governments would incur reduced incarceration costs.

Fiscal Analyst: Lindsay Hollander
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.