

SUBSTITUTE FOR

SENATE BILL NO. 1046

(As amended, June 6, 2006)

A bill to create a rebuttable presumption regarding the use of self-defense or the defense of others.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in subsection (2), it is a
2 rebuttable presumption in a civil or criminal case that an
3 individual who uses deadly force or force other than deadly force
4 under section 2 of the << >> self-defense act has an
5 honest and reasonable belief that imminent death of, sexual assault
6 of, or great bodily harm to himself or herself or another
7 individual will occur if both of the following apply:

8 (a) The individual against whom deadly force or force other
9 than deadly force is used is in the process of breaking and
10 entering a dwelling or business premises or committing home

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1 invasion or has broken and entered a dwelling or business premises
2 or committed home invasion and is still present in the dwelling or
3 business premises, or is unlawfully attempting to remove another
4 individual from a dwelling, business premises, or occupied vehicle
5 against his or her will.

6 (b) The individual using deadly force or force other than
7 deadly force <<honestly and reasonably believes that>> the individual is
8 engaging in conduct described in subdivision (a).

9 (2) The presumption set forth in subsection (1) does not apply
10 if any of the following circumstances exist:

11 (a) The individual against whom deadly force or force other
12 than deadly force is used, including an owner, lessee, or
13 titleholder, has the legal right to be in the dwelling, business
14 premises, or vehicle and there is not an injunction for protection
15 from domestic violence or a written pretrial supervision order, a
16 probation order, or a parole order of no contact against that
17 person.

18 (b) The individual removed or being removed from the dwelling,
19 business premises, or occupied vehicle is a child or grandchild of,
20 or is otherwise in the lawful custody of or under the lawful
21 guardianship of, the individual against whom deadly force or force
22 other than deadly force is used.

23 (c) The individual who uses deadly force or force other than
24 deadly force is engaged in an unlawful activity or is using the
25 dwelling, business premises, or occupied vehicle to further an
26 unlawful activity.

27 (d) The individual against whom deadly force or force other

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1 than deadly force is used is a peace officer who has entered or is
2 attempting to enter a dwelling, business premises, or vehicle in
3 the performance of his or her official duties and the peace officer
4 identifies himself or herself in accordance with applicable law or
5 the individual using deadly force or force other than deadly force
6 knows or reasonably should know that the individual entering or
7 attempting to enter the dwelling, business premises, or vehicle is
8 a peace officer.

<<(e) The individual against whom deadly force or force other than
deadly force is used is the spouse or former spouse of the individual
using deadly force or force other than deadly force, an individual with
whom the individual using deadly force or other than deadly force has or
had a dating relationship, an individual with whom the individual using
deadly force or other than deadly force has had a child in common, or a
resident or former resident of his or her household, and the individual
using deadly force or other than deadly force has a prior history of
domestic violence as the aggressor.>>

9 (3) As used in this section:

<<(a) "Domestic violence" means that term as defined in section 1
of 1978 PA 389, MCL 400.1501.>>

10 <<(b)>> "Business premises" means a building or other structure
11 used for the transaction of business, including an appurtenant
12 structure attached to that building or other structure.

13 <<(c)>> "Dwelling" means a structure or shelter that is used
14 permanently or temporarily as a place of abode, including an
15 appurtenant structure attached to that structure or shelter.

16 <<(d)>> "Law enforcement officer of a Michigan Indian tribal
17 police force" means a regularly employed member of a police force
18 of a Michigan Indian tribe who is appointed pursuant to former 25
19 CFR 12.100 to 12.103.

20 <<(e)>> "Michigan Indian tribe" means a federally recognized
21 Indian tribe that has trust lands located within this state.

22 <<(f)>> "Peace officer" means any of the following:

23 (i) A regularly employed member of a law enforcement agency
24 authorized and established pursuant to law, including common law,
25 who is responsible for the prevention and detection of crime and
26 the enforcement of the general criminal laws of this state. Peace
27 officer does not include a person serving solely because he or she

1 occupies any other office or position.

2 (ii) A law enforcement officer of a Michigan Indian tribal
3 police force.

4 (iii) The sergeant at arms or any assistant sergeant at arms of
5 either house of the legislature who is commissioned as a police
6 officer by that respective house of the legislature as provided by
7 the legislative sergeant at arms police powers act, 2001 PA 185,
8 MCL 4.381 to 4.382.

9 (iv) A law enforcement officer of a multicounty metropolitan
10 district.

11 (v) A county prosecuting attorney's investigator sworn and
12 fully empowered by the sheriff of that county.

13 (vi) Until December 31, 2007, a law enforcement officer of a
14 school district in this state that has a membership of at least
15 20,000 pupils and that includes in its territory a city with a
16 population of at least 180,000 as of the most recent federal
17 decennial census.

18 (vii) A fire arson investigator from a fire department within a
19 city with a population of not less than 750,000 who is sworn and
20 fully empowered by the city chief of police.

21 (viii) A security employee employed by the state pursuant to
22 section 6c of 1935 PA 59, MCL 28.6c.

23 (ix) A motor carrier officer appointed pursuant to section 6d
24 of 1935 PA 59, MCL 28.6d.

25 (x) A police officer or public safety officer of a community
26 college, college, or university who is authorized by the governing
27 board of that community college, college, or university to enforce

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1 state law and the rules and ordinances of that community college,
2 college, or university.

3 <<(g)>> "Vehicle" means a conveyance of any kind, whether or not
4 motorized, that is designed to transport people or property.

5 Enacting section 1. This act takes effect October 1, 2006.

6 Enacting section 2. This act does not take effect unless all
7 of the following bills of the 93rd Legislature are enacted into
8 law:

- 9 (a) Senate Bill No. 1185.
- 10 (b) House Bill No. 5142.
- 11 (c) House Bill No. 5143.
- 12 (d) House Bill No. 5153.
- 13 (e) House Bill No. 5548.