

# HOUSE BILL No. 5153

September 8, 2005, Introduced by Reps. Mortimer, Gaffney, Hildenbrand, Hune, Rocca, Green, Acciavatti, Nitz, Jones, Caul, Schuitmaker, David Law, Drolet, Baxter, Robertson and Farhat and referred to the Committee on Judiciary.

A bill to clarify the rights and duties of self-defense and the defense of others; to provide for criminal and civil immunity under certain circumstances; to regulate the investigation of incidents involving self-defense or the defense of others; and to provide for certain remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) A person is presumed to have held a reasonable  
2 fear of imminent peril of death or great bodily harm to himself or  
3 herself or another when using defensive force that is intended or  
4 likely to cause death or great bodily harm to another if both of  
5 the following apply:

6           (a) The person against whom the defensive force was used was  
7 in the process of unlawfully and forcibly entering, or had

1 unlawfully and forcibly entered, a dwelling, residence, or occupied  
2 vehicle, or that person had removed or was attempting to remove  
3 another person against that person's will from the dwelling,  
4 residence, or occupied vehicle.

5 (b) The person who uses defensive force knew or had reason to  
6 believe that an unlawful and forcible entry or unlawful and  
7 forcible act was occurring or had occurred.

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

10 (a) The person against whom the defensive force is used has  
11 the right to be in or is a lawful resident of the dwelling,  
12 residence, or vehicle, such as an owner, lessee, or titleholder,  
13 and there is not an injunction for protection from domestic  
14 violence or a written pretrial supervision order of no contact  
15 against that person.

16 (b) The person sought to be removed is a child or grandchild  
17 of, or is otherwise in the lawful custody or under the lawful  
18 guardianship of, the person against whom the defensive force is  
19 used.

20 (c) The person who uses defensive force is engaged in an  
21 unlawful activity or is using the dwelling, residence, or occupied  
22 vehicle to further an unlawful activity.

23 (d) The person against whom the defensive force is used is a  
24 law enforcement officer who enters or attempts to enter a dwelling,  
25 residence, or vehicle in the performance of his or her official  
26 duties and the officer identified himself or herself in accordance  
27 with applicable law or the person using force knew or reasonably

1 should have known that the person entering or attempting to enter  
2 was a law enforcement officer.

3 (3) A person who is not engaged in an unlawful activity and  
4 who is attacked in any other place where he or she has a right to  
5 be has no duty to retreat and has the right to stand his or her  
6 ground and meet force with force, including deadly force if he or  
7 she reasonably believes it is necessary to do so to prevent death  
8 or great bodily harm to himself or herself or to another person or  
9 to prevent the commission of a forcible felony.

10 (4) A person who unlawfully and by force enters or attempts to  
11 enter a person's dwelling, residence, or occupied vehicle is  
12 presumed to be doing so with the intent to commit an unlawful act  
13 involving force or violence.

14 (5) As used in this section:

15 (a) "Dwelling" means a building or conveyance of any kind,  
16 including any attached porch, whether the building or conveyance is  
17 temporary or permanent, mobile or immobile, that has a roof over  
18 it, including a tent, and that is designed to be occupied by  
19 people.

20 (b) "Residence" means a dwelling in which a person resides  
21 either temporarily or permanently or is visiting as an invited  
22 guest.

23 (c) "Vehicle" means a conveyance of any kind, whether or not  
24 motorized, that is designed to transport people or property.

25 Sec. 2. (1) A person is justified in using force, except  
26 deadly force, against another person when and to the extent that  
27 the person reasonably believes that the conduct is necessary to

1 defend himself or herself or another against the other's imminent  
2 use of unlawful force.

3 (2) A person is justified in the use of deadly force and does  
4 not have a duty under this section to retreat if either of the  
5 following applies:

6 (a) He or she reasonably believes that such force is necessary  
7 to prevent imminent death or great bodily harm to himself or  
8 herself or another or to prevent the imminent commission of a  
9 forcible felony.

10 (b) Any of the circumstances enumerated under section 1.

11 Sec. 3. (1) A person is justified in the use of force, except  
12 deadly force, against another when and to the extent that the  
13 person reasonably believes that the use of force is necessary to  
14 prevent or terminate the other person's trespass on or other  
15 tortious or criminal interference with real property, other than a  
16 dwelling or personal property, that is lawfully in his or her  
17 possession or in the possession of another person who is a member  
18 of his or her immediate family or household, or of a person whose  
19 property he or she has a legal duty to protect.

20 (2) A person is justified in the use of deadly force only if  
21 he or she reasonably believes that deadly force is necessary to  
22 prevent the imminent commission of a forcible felony. A person does  
23 not have a duty under this section to retreat if the person is in a  
24 place where he or she has a right to be.

25 Sec. 4. (1) A person who uses force as permitted in section 1,  
26 2, or 3 is justified in using that force and is immune from  
27 criminal prosecution and from any civil action for the use of that

1 force, unless the person against whom force was used is a law  
2 enforcement officer who was acting in the performance of his or her  
3 official duties and the officer identified himself or herself in  
4 accordance with any applicable law or the person using force knew  
5 or reasonably should have known that the person was a law  
6 enforcement officer. As used in this subsection, "criminal  
7 prosecution" includes arresting, detaining in custody, charging, or  
8 prosecuting the defendant.

9 (2) A law enforcement agency may use standard procedures for  
10 investigating the use of force as described in subsection (1), but  
11 the agency shall not arrest the person for using force unless it  
12 determines that there is probable cause that the force that was  
13 used was unlawful.

14 (3) The court shall award reasonable attorney fees, court  
15 costs, compensation for loss of income, and all expenses incurred  
16 by the defendant in defense of any civil action brought by a  
17 plaintiff if the court finds that the defendant is immune from  
18 prosecution as provided in subsection (1).