

RIGHT TO DEFEND ONE'S SELF AND OTHERS

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House Bill 5142
Sponsor: Rep. Tom Casperson

House Bill 5153
Sponsor: Rep. Leslie Mortimer

House Bill 5143
Sponsor: Rep. Rick Jones

House Bill 5548
Sponsor: Rep. Tim Moore

Committee: Judiciary
Complete to 4-17-06

A SUMMARY OF HOUSE BILLS 5142-5143 AS INTRODUCED 9-7-05, HOUSE BILL 5153 AS INTRODUCED 9-8-05, AND HOUSE BILL 5548 AS INTRODUCED 1-17-06

The bills would create a new law, and amend various acts, to specify a right to self-defense and the defense of others; delineate when and where the duty to retreat does not apply; provide for criminal and civil immunity under certain circumstances; and regulate the investigation of incidents involving self-defense or the defense of others.

House Bill 5548 is tie-barred to House Bills 5143 and 5153 (which are identical), so that it could not go into effect unless those bills also were enacted into law.

A detailed description of each bill follows.

House Bill 5142 would amend the Code of Criminal Procedure (MCL 760.21c) to allow a person to use deadly force in self-defense when a criminal was forcibly entering or intruding into a home or vehicle. More specifically, it would be a defense during the prosecution for any 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 (that is, the fenced-in ground and buildings immediately surrounding a house or dwelling).

House Bill 5143 and House Bill 5153 are identical bills. Each would create a new law to specify a right to self-defense and the defense of others; clarify and provide for criminal and civil immunity under certain circumstances; and regulate the investigation of incidents involving self-defense or the defense of others.

Reasonable Fear of Imminent Peril

Under the bills, a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm when using defensive force—that was intended or likely to cause death or great bodily harm to another—if both of the following applied:

- The person against whom the defensive force was being used was in the process of unlawfully and forcibly entering, or had already entered a dwelling, residence, or occupied vehicle, or that person had removed or was attempting to remove another person against that person's will from the dwelling, residence, or occupied vehicle.
- The person who used defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

Exceptions to Reasonable Fear Presumption

The presumption cited above would *not* apply in any of the following instances.

- The person against whom the force was used had the right to be in, or was a lawful resident of, the dwelling or vehicle (such as an owner, lessee, or titleholder), and the person was not subject to an injunction for protection from domestic violence or a written pretrial supervision order of no contact.
- The person sought to be removed was a child or grandchild or was otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force was used.
- The person who used force was engaged in an unlawful activity or was using the dwelling, residence, or occupied vehicle to further an unlawful activity.
- The person against whom the defensive force was used was a law enforcement officer who entered or attempted to enter a dwelling, residence or vehicle in the performance of his or her official duties, and the officer identified himself or herself in accord with the law, or the person using force knew or reasonably should have known that the person entering was a law enforcement officer.

No Duty to Retreat

A person not engaged in an unlawful activity and attacked in a place where he or she had a right to be would have no duty to retreat, but rather would have the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believed it was necessary to do so to prevent death or great bodily harm to himself or herself, or to another person, or to prevent the commission of a forcible felony.

Further, a person who unlawfully and by force entered or attempted to enter a person's dwelling, residence, or occupied vehicle would be presumed to be doing so with the intent to commit an unlawful act involving force or violence.

The term "dwelling" is defined to 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 or mobile or immobile (including a tent) and that is designed to be occupied by people. "Residence" means a dwelling in which a person resides either

temporarily or permanently or is visiting as an invited guest. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

Justified Use of Force

A person would be justified in using force, except deadly force, against another person when and to the extent that the person reasonably believed that the conduct was necessary to defend himself or herself or another against another's imminent use of unlawful force. A person would be justified in the use of deadly force, and would not have a duty to retreat, if either of the following applied: 1) he or she believed that such force was necessary to prevent imminent death or great bodily harm to himself or herself or another, or to prevent the imminent commission of a forcible felony; or 2) any of the circumstances enumerated above related to the reasonable fear of imminent peril existed.

Trespass and Other Interference

A person would be justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believed that the use of force was necessary to prevent or terminate the other person's trespass on—or other tortious or criminal interference with—real property, other than a dwelling or personal property, that was lawfully in his or her possession, or in the possession of another person who was a member of his or her immediate family or household, or of a person whose property he or she had a legal duty to protect.

A person would be justified in the use of deadly force only if he or she reasonably believed that deadly force was necessary to prevent the imminent commission of a forcible felony. A person would not have a duty to retreat if the person was in a place where he or she had a right to be.

Criminal and Civil Immunity

A person who used force as permitted above would be justified in using that force and would be immune from criminal prosecution, and from any civil action for the use of that force, unless the person against whom force was used was a law enforcement officer who was acting in the performance of official duties and identified himself or herself in accord with the law, or the person knew or should have known that the person was a law enforcement officer. As used in this subsection, "criminal prosecution" is defined to include arresting, detaining in custody, charging, or prosecuting the defendant.

A law enforcement agency could use standard procedures for investigating the use of force, but the agency would be prohibited from arresting the person for using force unless it determined that there was probable cause that the force that was used was unlawful.

Finally, the court could award reasonable attorney 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 was immune from prosecution as provided above.

House Bill 5548 would amend the Revised Judicature Act (MCL 600.2922b) to specify that an individual who used force in compliance with the Self-Defense Act, and who was not engaged in the commission of a crime at the time he or she used that force, would be immune from civil liability. Under the bill, the court would be required to award the payment of actual and reasonable attorney fees and costs to an individual who was alleged to have used force, if the court determined that the use of force was in compliance with the Self-Defense Act, and that the individual was therefore immune from civil liability. The bill is tie-barred to House Bills 5143 and 5153.

FISCAL IMPACT:

The bills would have no significant fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.