

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1046

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 honest and
5 reasonable belief that imminent death of, sexual assault of, or
6 great bodily harm to himself or herself or another individual will
7 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

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

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

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

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

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

24 (c) The individual who uses deadly force or force other than
25 deadly force is engaged in the commission of a crime or is using
26 the dwelling, business premises, or occupied vehicle to further the
27 commission of a crime.

1 (d) The individual against whom deadly force or force other
2 than deadly force is used is a peace officer who has entered or is
3 attempting to enter a dwelling, business premises, or vehicle in
4 the performance of his or her official duties in accordance with
5 applicable law.

6 (e) The individual against whom deadly force or force other
7 than deadly force is used is the spouse or former spouse of the
8 individual using deadly force or force other than deadly force, an
9 individual with whom the individual using deadly force or other
10 than deadly force has or had a dating relationship, an individual
11 with whom the individual using deadly force or other than deadly
12 force has had a child in common, or a resident or former resident
13 of his or her household, and the individual using deadly force or
14 other than deadly force has a prior history of domestic violence as
15 the aggressor.

16 (3) As used in this section:

17 (a) "Domestic violence" means that term as defined in section
18 1 of 1978 PA 389, MCL 400.1501.

19 (b) "Business premises" means a building or other structure
20 used for the transaction of business, including an appurtenant
21 structure attached to that building or other structure.

22 (c) "Dwelling" means a structure or shelter that is used
23 permanently or temporarily as a place of abode, including an
24 appurtenant structure attached to that structure or shelter.

25 (d) "Law enforcement officer of a Michigan Indian tribal
26 police force" means a regularly employed member of a police force
27 of a Michigan Indian tribe who is appointed pursuant to former 25

1 CFR 12.100 to 12.103.

2 (e) "Michigan Indian tribe" means a federally recognized
3 Indian tribe that has trust lands located within this state.

4 (f) "Peace officer" means any of the following:

5 (i) A regularly employed member of a law enforcement agency
6 authorized and established pursuant to law, including common law,
7 who is responsible for the prevention and detection of crime and
8 the enforcement of the general criminal laws of this state. Peace
9 officer does not include a person serving solely because he or she
10 occupies any other office or position.

11 (ii) A law enforcement officer of a Michigan Indian tribal
12 police force.

13 (iii) The sergeant at arms or any assistant sergeant at arms of
14 either house of the legislature who is commissioned as a police
15 officer by that respective house of the legislature as provided by
16 the legislative sergeant at arms police powers act, 2001 PA 185,
17 MCL 4.381 to 4.382.

18 (iv) A law enforcement officer of a multicounty metropolitan
19 district.

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

22 (vi) Until December 31, 2007, a law enforcement officer of a
23 school district in this state that has a membership of at least
24 20,000 pupils and that includes in its territory a city with a
25 population of at least 180,000 as of the most recent federal
26 decennial census.

27 (vii) A fire arson investigator from a fire department within a

1 city with a population of not less than 750,000 who is sworn and
2 fully empowered by the city chief of police.

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

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

7 (x) A police officer or public safety officer of a community
8 college, college, or university who is authorized by the governing
9 board of that community college, college, or university to enforce
10 state law and the rules and ordinances of that community college,
11 college, or university.

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

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

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

18 (a) Senate Bill No. 1185.

19 (b) House Bill No. 5142.

20 (c) House Bill No. 5143.

21 (d) House Bill No. 5153.

22 (e) House Bill No. 5548.