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BILL ANALYSIS

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Senate Bill 1046 (as introduced 2-15-06)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

Date Completed: 5-11-06

CONTENT

The bill would create a new act to do all of the following:

- Establish a presumption of reasonable fear of imminent peril of death or great bodily harm when a person used lethal defensive force under certain circumstances involving unlawful forcible entry.**
- Specify that a person would have no duty to retreat and would have the right to meet force with force, if he or she were not engaged in unlawful activity and were attacked in any place where he or she had a right to be, if the person believed the force necessary to prevent death or great bodily harm or the commission of a forcible felony.**
- Provide that a person would be justified in using force, except lethal force, against another person if he or she reasonably believed it necessary to defend against the other person's imminent use of unlawful force.**
- State that a person would be justified in the use of lethal force and would not have a duty to retreat if he or she reasonably believed it necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony.**
- Specify that a person would be justified in the use of force, except lethal force, against another person if he or she reasonably believed it necessary to prevent or terminate the other person's trespass on or other tortious or criminal interference with certain real property, and that a person would be justified to use lethal force if he or she reasonably believed it necessary to prevent the imminent commission of a forcible felony.**
- Establish criminal and civil immunity for the use of force permitted under the bill.**
- Require a court to award reasonable attorney fees, court costs, compensation of lost income, and all expenses incurred by a civil defendant who was immune under the bill.**

Defense Against Unlawful Forcible Entry

The bill specifies that a person would be presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another, 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 force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, residence, or

occupied vehicle, or that person had removed or was attempting to remove another person, against his or her 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.

The presumption would not apply if any of the following applied:

- The person against whom the defensive force was used had the right to be in or was a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there was not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.
- The person sought to be removed was a child or grandchild of, 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 defensive 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 accordance with applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

A person who was not engaged in an unlawful activity and who was attacked in any other place where he or she had a right to be, would have no duty to retreat and 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 prevent death or great bodily harm to himself or herself or to another person or to prevent the commission of a forcible felony.

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.

"Dwelling" would mean a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, that has a roof over it, including a tent, and that is designed to be occupied by people.

"Residence" would mean a dwelling in which a person resides, either temporarily or permanently, or is visiting as an invited guest.

"Vehicle" would mean a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

Defense Against Force

Under the bill, 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 the other'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:

- He or she reasonably 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.
- Any of the circumstances described above for defense against unlawful forcible entry.

Defense Against Trespass

Under the bill, 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 he or she were in a place where he or she had a right to be.

Criminal & Civil Immunity

A person who used force as permitted under the bill 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. Immunity would not apply, however, if the person against whom force was used were a law enforcement officer who was acting in the performance of his or her official duties and had identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. ("Criminal prosecution" would include charging or prosecuting the defendant.)

The court would have to 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 found that the defendant was immune from prosecution as provided in the bill.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill 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. Alabama, Arizona, Florida, Georgia, Indiana, and other states have enacted similar legislation, but too recently to determine if there has been any fiscal impact. To the extent that the bill 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.