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.
- (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.
- (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.
- (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.
- (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.
- (e) House Bill No. 5548.