

FIRST REGULAR SESSION

# HOUSE BILL NO. 189

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JONES (117) (Sponsor), SCHAD, PORTWOOD, FISHER, DUSENBERG, WHORTON, ERVIN, HARRIS (110), BAKER (123), FLOOK, SANDER, WETER, MUNZLINGER, BIVINS, DAVIS, SMITH (150), RUESTMAN, MCGHEE, SATER, ROBB, MOORE AND FRAME (Co-sponsors).

Pre-filed December 21, 2006 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0562L.011

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### AN ACT

To amend chapter 563, RSMo, by adding thereto two new sections relating to the defensive use of force.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 563, RSMo, is amended by adding thereto two new sections, to be known as sections 563.043 and 563.058, to read as follows:

**563.043. 1. A person is 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 is intended or likely to cause death or great bodily harm to another if:**

**(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering or had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and**

**(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible act was occurring or had occurred.**

**2. The presumption set forth in subsection 1 of this section does not apply if:**

**(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, titleholder,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 and there is not an injunction for protection from domestic violence or a written pretrial  
14 supervision order of no contact against that person; or

15 (2) The person or persons sought to be removed is a child or grandchild, or is  
16 otherwise in the lawful custody of or under the lawful guardianship of the person against  
17 whom the defensive force is used; or

18 (3) The person who uses defensive force is engaged in an unlawful activity or is  
19 using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

20 (4) The person against whom the defensive force is used is a law enforcement  
21 officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the  
22 performance of his or her official duties and the officer identified himself or herself in  
23 accordance with any applicable law or the person using force knew or reasonably should  
24 have known that the person entering or attempting to enter was a law enforcement officer.

25 3. A person who is not engaged in an unlawful activity and who is attacked in any  
26 other place where he or she has a right to be has no duty to retreat and has the right to  
27 stand his or her ground and meet force with force if he or she reasonably believes it  
28 necessary to do so to prevent death or great bodily harm to himself or herself or another  
29 or to prevent the commission of a forcible felony.

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

563.058. 1. A person who uses force as permitted in sections 563.031, 563.036,  
2 563.043, and 563.046, is justified in using such force and is immune from criminal  
3 prosecution and civil actions for the use of such force, unless the person against whom  
4 force was used is a law enforcement officer who was acting in the performance of his or her  
5 official duties and the officer identified himself or herself in accordance with any  
6 applicable law or the person using force knew or reasonably should have known that the  
7 person was a law enforcement officer. As used in this subsection, the term "criminal  
8 prosecution" includes arresting, detaining in custody, and charging or prosecuting the  
9 defendant.

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

14 3. The court shall award reasonable attorney's fees and court costs, compensation  
15 for loss of income, and all expenses incurred by the defendant in defense of any civil action

16 **brought by a plaintiff if the court finds that the defendant is immune from prosecution as**  
17 **provided in subsection 1 of this section.**

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