

HOUSE BILL 455

E1
SB 870/06 – JPR

71r2318
CF SB 518

By: **Delegates Frank and Boteler**

Introduced and read first time: February 6, 2007

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Protection of Persons and Property – Immunity**

3 FOR the purpose of providing that a person is justified in using force, except deadly
4 force, against another under certain circumstances; providing that a person is
5 justified in using deadly force under certain circumstances; providing that a
6 certain person has no duty to retreat under certain circumstances; providing
7 that a person is presumed to have reasonably believed that the use of deadly
8 force was necessary under certain circumstances; providing that a certain
9 person is presumed to be acting with a certain intent under certain
10 circumstances; providing that a certain person is immune from criminal
11 prosecution and civil action under certain circumstances; requiring the court to
12 award certain fees, costs, compensation, and expenses to a certain person under
13 certain circumstances; defining certain terms; creating certain exceptions; and
14 generally relating to immunity for those who act in protection of persons and
15 property.

16 BY adding to

17 Article – Criminal Law
18 Section 2–210
19 Annotated Code of Maryland
20 (2002 Volume and 2006 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **2-210.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
3 MEANINGS INDICATED.

4 (2) (I) "DWELLING" MEANS A TEMPORARY OR PERMANENT
5 BUILDING OR CONVEYANCE THAT:

6 1. HAS A ROOF OVER IT; AND

7 2. IS DESIGNED TO LODGE PEOPLE AT NIGHT.

8 (II) "DWELLING" INCLUDES:

9 1. A PORCH ATTACHED TO A DWELLING; AND

10 2. A TENT.

11 (3) "LAW ENFORCEMENT OFFICER" HAS THE MEANING STATED IN
12 § 3-101 OF THE PUBLIC SAFETY ARTICLE.

13 (4) "VEHICLE" MEANS A CONVEYANCE, WHETHER OR NOT
14 MOTORIZED, THAT IS DESIGNED TO TRANSPORT PEOPLE OR PROPERTY.

15 (B) A PERSON IS JUSTIFIED IN USING FORCE, EXCEPT DEADLY FORCE,
16 AGAINST ANOTHER IF THE PERSON REASONABLY BELIEVES THAT THE USE OF
17 FORCE IS NECESSARY TO:

18 (1) DEFEND THE PERSON OR A THIRD PERSON AGAINST THE
19 OTHER'S IMMINENT USE OF UNLAWFUL FORCE; OR

20 (2) PREVENT OR TERMINATE THE OTHER'S TRESPASS ON OR
21 INTERFERENCE WITH REAL PROPERTY:

22 (I) IN WHICH THE PERSON HAS A POSSESSORY INTEREST;

23 (II) IN WHICH A MEMBER OF THE PERSON'S IMMEDIATE
24 FAMILY OR HOUSEHOLD HAS A POSSESSORY INTEREST; OR

1 **(III) THAT THE PERSON HAS A LEGAL DUTY TO PROTECT.**

2 **(C) A PERSON IS JUSTIFIED IN USING DEADLY FORCE IF THE PERSON**
3 **REASONABLY BELIEVES THAT THE USE OF DEADLY FORCE IS NECESSARY TO**
4 **PREVENT:**

5 **(1) IMMINENT DEATH OR SERIOUS BODILY HARM TO THE PERSON**
6 **OR ANOTHER; OR**

7 **(2) THE IMMINENT COMMISSION OF A FORCIBLE FELONY.**

8 **(D) A PERSON WHO IS NOT ENGAGED IN UNLAWFUL ACTIVITY AND IS IN**
9 **A PLACE WHERE THE PERSON HAS A RIGHT TO BE HAS NO DUTY TO RETREAT**
10 **WHEN ATTACKED OR THREATENED WITH THE USE OF FORCE.**

11 **(E) (1) EXCEPT AS PROVIDED BY PARAGRAPH (2) OF THIS**
12 **SUBSECTION, A PERSON IS PRESUMED TO HAVE REASONABLY BELIEVED THAT**
13 **THE USE OF DEADLY FORCE WAS NECESSARY, IN ACCORDANCE WITH**
14 **SUBSECTION (C) OF THIS SECTION, IF THE PERSON AGAINST WHOM THE DEADLY**
15 **FORCE WAS USED:**

16 **(I) WAS IN THE PROCESS OF UNLAWFULLY AND FORCIBLY**
17 **ENTERING, OR HAD UNLAWFULLY AND FORCIBLY ENTERED, A DWELLING OR**
18 **OCCUPIED VEHICLE; OR**

19 **(II) HAD REMOVED OR WAS ATTEMPTING TO REMOVE A**
20 **THIRD PERSON FROM A DWELLING OR OCCUPIED VEHICLE AGAINST THE THIRD**
21 **PERSON'S WILL.**

22 **(2) THE PRESUMPTION SET FORTH IN PARAGRAPH (1) OF THIS**
23 **SUBSECTION DOES NOT APPLY IF:**

24 **(I) THE PERSON AGAINST WHOM THE DEADLY FORCE WAS**
25 **USED HAD THE RIGHT TO BE IN THE DWELLING OR VEHICLE;**

26 **(II) THE PERSON AGAINST WHOM THE DEADLY FORCE WAS**
27 **USED HAD REMOVED OR WAS ATTEMPTING TO REMOVE A THIRD PERSON WHO**

1 WAS IN THE PERSON'S LAWFUL CUSTODY OR GUARDIANSHIP FROM THE
2 DWELLING OR VEHICLE;

3 (III) THE PERSON USING DEADLY FORCE WAS ENGAGED IN
4 AN UNLAWFUL ACTIVITY; OR

5 (IV) THE PERSON USING DEADLY FORCE KNEW OR
6 REASONABLY SHOULD HAVE KNOWN THAT THE PERSON ENTERING OR
7 ATTEMPTING TO ENTER WAS A LAW ENFORCEMENT OFFICER ACTING IN THE
8 PERFORMANCE OF AN OFFICIAL DUTY.

9 (F) A PERSON WHO UNLAWFULLY AND FORCIBLY ENTERS OR ATTEMPTS
10 TO ENTER A PERSON'S DWELLING OR OCCUPIED VEHICLE IS PRESUMED TO BE
11 DOING SO WITH THE INTENT TO COMMIT A FORCIBLE FELONY.

12 (G) A PERSON WHO IS JUSTIFIED IN USING FORCE IN ACCORDANCE
13 WITH THIS SECTION IS IMMUNE FROM CRIMINAL PROSECUTION AND CIVIL
14 ACTION FOR THE USE OF THAT FORCE, UNLESS THE PERSON KNEW OR
15 REASONABLY SHOULD HAVE KNOWN THAT THE PERSON AGAINST WHOM THE
16 FORCE WAS USED WAS A LAW ENFORCEMENT OFFICER ACTING IN THE
17 PERFORMANCE OF AN OFFICIAL DUTY.

18 (H) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES, COURT
19 COSTS, COMPENSATION FOR LOSS OF INCOME, AND ALL EXPENSES INCURRED
20 BY THE DEFENDANT IN DEFENSE OF ANY CIVIL ACTION BROUGHT AGAINST THE
21 DEFENDANT FOR THE IMPROPER USE OF FORCE IF THE COURT FINDS THAT THE
22 DEFENDANT IS IMMUNE FROM PROSECUTION UNDER SUBSECTION (G) OF THIS
23 SECTION.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2007.