

1 HB34
2 188773-1
3 By Representatives Greer and Rowe
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 11/28/2017

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8 SYNOPSIS: Under existing law, a person is justified in
9 using physical force, including deadly force, in
10 self-defense or in the defense of another person
11 under certain conditions, and an occupant of a
12 dwelling or business property may use deadly
13 physical force, and is legally presumed to be
14 justified in using deadly physical force, in
15 self-defense or the defense of another person
16 against a person committing or attempting to commit
17 certain specified crimes.

18 This bill would provide that a person is not
19 criminally liable for using physical force,
20 including deadly force, in self-defense or in the
21 defense of another person on the premises of a
22 church under certain conditions.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to self-defense and the defense of others;
2 to amend Sections 13A-3-20 and 13A-3-23, Code of Alabama 1975,
3 to provide that a person is not criminally liable for using
4 physical force, including deadly force, in self-defense or in
5 the defense of another person on the premises of a church
6 under certain conditions.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. This act shall be known and may be cited
9 as the Alabama Church Protection Act.

10 Section 2. Sections 13A-3-20 and 13A-3-23 Code of
11 Alabama 1975, are amended to read as follows:

12 "§13A-3-20.

13 "The following definitions are applicable to this
14 article:

15 "(1) BUILDING. Any structure which may be entered
16 and utilized by persons for business, public use, lodging, or
17 the storage of goods, and includes any vehicle, aircraft, or
18 watercraft used for the lodging of persons or carrying on
19 business therein. Each unit of a building consisting of two or
20 more units separately occupied or secured is a separate
21 building.

22 "(2) CHURCH. A bona fide duly constituted religious
23 society or ecclesiastical body of any sect, order, or
24 denomination, or any congregation thereof.

25 "~~(2)~~ (3) DEADLY PHYSICAL FORCE. Force which, under
26 the circumstances in which it is used, is readily capable of
27 causing death or serious physical injury.

1 "~~(3)~~(4) DWELLING. A building which is usually
2 occupied by a person lodging therein at night, or a building
3 of any kind, including any attached balcony, whether the
4 building is temporary or permanent, mobile or immobile, which
5 has a roof over it, and is designed to be occupied by people
6 lodging therein at night.

7 "~~(4)~~(5) FORCE. Physical action or threat against
8 another, including confinement.

9 "~~(5)~~(6) PREMISES. The term includes any building, as
10 defined in this section, and any real property.

11 "~~(6)~~(7) RESIDENCE. A dwelling in which a person
12 resides either temporarily or permanently or is visiting as an
13 invited guest.

14 "~~(7)~~(8) VEHICLE. A motorized conveyance which is
15 designed to transport people or property.

16 "§13A-3-23.

17 "(a) A person is justified in using physical force
18 upon another person in order to defend himself or herself or a
19 third person from what he or she reasonably believes to be the
20 use or imminent use of unlawful physical force by that other
21 person, and he or she may use a degree of force which he or
22 she reasonably believes to be necessary for the purpose. A
23 person may use deadly physical force, and is legally presumed
24 to be justified in using deadly physical force in self-defense
25 or the defense of another person pursuant to subdivision (5),
26 if the person reasonably believes that another person is:

1 "(1) Using or about to use unlawful deadly physical
2 force.

3 "(2) Using or about to use physical force against an
4 occupant of a dwelling while committing or attempting to
5 commit a burglary of such dwelling.

6 "(3) Committing or about to commit a kidnapping in
7 any degree, assault in the first or second degree, burglary in
8 any degree, robbery in any degree, forcible rape, or forcible
9 sodomy.

10 "(4) Using or about to use physical force against an
11 owner, employee, or other person authorized to be on business
12 property when the business is closed to the public while
13 committing or attempting to commit a crime involving death,
14 serious physical injury, robbery, kidnapping, rape, sodomy, or
15 a crime of a sexual nature involving a child under the age of
16 12.

17 "(5) Using or about to use physical force against an
18 employee, volunteer, or member of a church or any other person
19 authorized to be on the premises of the church when the church
20 is open or closed to the public while committing or attempting
21 to commit a crime involving death, serious physical injury,
22 robbery, kidnapping, rape, sodomy, or a crime of a sexual
23 nature involving a child under the age of 12.

24 "~~(5)~~ (6) In the process of unlawfully and forcefully
25 entering, or has unlawfully and forcefully entered, a
26 dwelling, residence, business property, or occupied vehicle,
27 or federally licensed nuclear power facility, or is in the

1 process of sabotaging or attempting to sabotage a federally
2 licensed nuclear power facility, or is attempting to remove,
3 or has forcefully removed, a person against his or her will
4 from any dwelling, residence, business property, or occupied
5 vehicle when the person has a legal right to be there, and
6 provided that the person using the deadly physical force knows
7 or has reason to believe that an unlawful and forcible entry
8 or unlawful and forcible act is occurring. The legal
9 presumption that a person using deadly physical force is
10 justified to do so pursuant to this subdivision does not apply
11 if:

12 "a. The person against whom the defensive force is
13 used has the right to be in or is a lawful resident of the
14 dwelling, residence, or vehicle, such as an owner or lessee,
15 and there is not an injunction for protection from domestic
16 violence or a written pretrial supervision order of no contact
17 against that person;

18 "b. The person sought to be removed is a child or
19 grandchild, or is otherwise in the lawful custody or under the
20 lawful guardianship of, the person against whom the defensive
21 force is used;

22 "c. The person who uses defensive force is engaged
23 in an unlawful activity or is using the dwelling, residence,
24 or occupied vehicle to further an unlawful activity; or

25 "d. The person against whom the defensive force is
26 used is a law enforcement officer acting in the performance of
27 his or her official duties.

1 "(b) A person who is justified under subsection (a)
2 in using physical force, including deadly physical force, and
3 who is not engaged in an unlawful activity and is in any place
4 where he or she has the right to be has no duty to retreat and
5 has the right to stand his or her ground.

6 "(c) Notwithstanding the provisions of subsection
7 (a), a person is not justified in using physical force if:

8 "(1) With intent to cause physical injury or death
9 to another person, he or she provoked the use of unlawful
10 physical force by such other person.

11 "(2) He or she was the initial aggressor, except
12 that his or her use of physical force upon another person
13 under the circumstances is justifiable if he or she withdraws
14 from the encounter and effectively communicates to the other
15 person his or her intent to do so, but the latter person
16 nevertheless continues or threatens the use of unlawful
17 physical force.

18 "(3) The physical force involved was the product of
19 a combat by agreement not specifically authorized by law.

20 "(d) (1) Except as provided in Section 13A-3-21, a
21 person who uses force, including deadly physical force, as
22 justified and permitted in this section is immune from
23 criminal prosecution and civil action for the use of such
24 force, unless the force was determined to be unlawful.

25 "(2) Prior to the commencement of a trial in a case
26 in which a defense is claimed under this section, the court
27 having jurisdiction over the case, upon motion of the

1 defendant, shall conduct a pretrial hearing to determine
2 whether force, including deadly force, used by the defendant
3 was justified or whether it was unlawful under this section.
4 During any pretrial hearing to determine immunity, the
5 defendant must show by a preponderance of the evidence that he
6 or she is immune from criminal prosecution.

7 "(3) If, after a pretrial hearing under subdivision
8 (2), the court concludes that the defendant has proven by a
9 preponderance of the evidence that force, including deadly
10 force, was justified, the court shall enter an order finding
11 the defendant immune from criminal prosecution and dismissing
12 the criminal charges.

13 "(4) If the defendant does not meet his or her
14 burden of proving immunity at the pre-trial hearing, he or she
15 may continue to pursue the defense of self-defense or defense
16 of another person at trial. Once the issue of self-defense or
17 defense of another person has been raised by the defendant,
18 the state continues to bear the burden of proving beyond a
19 reasonable doubt all of the elements of the charged conduct.

20 "(e) A law enforcement agency may use standard
21 procedures for investigating the use of force described in
22 subsection (a), but the agency may not arrest the person for
23 using force unless it determines that there is probable cause
24 that the force used was unlawful."

25 Section 3. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

