

1 HB272  
2 189866-1  
3 By Representative Coleman  
4 RFD: Judiciary  
5 First Read: 21-MAR-19

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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.

12 This bill would provide that a person is not  
13 justified in using physical force if he or she  
14 initially pursued another person engaged in a  
15 lawful activity in a public place and the pursuit  
16 resulted in a confrontation and the use of force,  
17 including deadly force.

18 This bill would also provide immunity to  
19 innocent bystanders who use force to protect  
20 themselves as a result of a confrontation between  
21 other persons.

22 Amendment 621 of the Constitution of Alabama  
23 of 1901, now appearing as Section 111.05 of the  
24 Official Recompilation of the Constitution of  
25 Alabama of 1901, as amended, prohibits a general  
26 law whose purpose or effect would be to require a  
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local  
2 governmental entity without enactment by a 2/3 vote  
3 unless: it comes within one of a number of  
4 specified exceptions; it is approved by the  
5 affected entity; or the Legislature appropriates  
6 funds, or provides a local source of revenue, to  
7 the entity for the purpose.

8 The purpose or effect of this bill would be  
9 to require a new or increased expenditure of local  
10 funds within the meaning of the amendment. However,  
11 the bill does not require approval of a local  
12 governmental entity or enactment by a 2/3 vote to  
13 become effective because it comes within one of the  
14 specified exceptions contained in the amendment.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

20 To amend Section 13A-3-23, Code of Alabama 1975; to  
21 provide that a person is not justified in using physical force  
22 if he or she pursued another person engaged in a lawful  
23 activity in a public place and the pursuit resulted in a  
24 confrontation and the use of force; to provide immunity to  
25 innocent bystanders; and in connection therewith would have as  
26 its purpose or effect the requirement of a new or increased  
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as  
2 Section 111.05 of the Official ReCompilation of the  
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 13A-3-23, Code of Alabama 1975,  
6 is amended to read as follows:

7 "§13A-3-23.

8 "(a) A person is justified in using physical force  
9 upon another person in order to defend himself or herself or a  
10 third person from what he or she reasonably believes to be the  
11 use or imminent use of unlawful physical force by that other  
12 person, and he or she may use a degree of force which he or  
13 she reasonably believes to be necessary for the purpose. A  
14 person may use deadly physical force, and is legally presumed  
15 to be justified in using deadly physical force in self-defense  
16 or the defense of another person pursuant to subdivision (5),  
17 if the person reasonably believes that another person is:

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

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

23 "(3) Committing or about to commit a kidnapping in  
24 any degree, assault in the first or second degree, burglary in  
25 any degree, robbery in any degree, forcible rape, or forcible  
26 sodomy.

1           "(4) Using or about to use physical force against an  
2 owner, employee, or other person authorized to be on business  
3 property when the business is closed to the public while  
4 committing or attempting to commit a crime involving death,  
5 serious physical injury, robbery, kidnapping, rape, sodomy, or  
6 a crime of a sexual nature involving a child under the age of  
7 12.

8           "(5) In the process of unlawfully and forcefully  
9 entering, or has unlawfully and forcefully entered, a  
10 dwelling, residence, business property, or occupied vehicle,  
11 or federally licensed nuclear power facility, or is in the  
12 process of sabotaging or attempting to sabotage a federally  
13 licensed nuclear power facility, or is attempting to remove,  
14 or has forcefully removed, a person against his or her will  
15 from any dwelling, residence, business property, or occupied  
16 vehicle when the person has a legal right to be there, and  
17 provided that the person using the deadly physical force knows  
18 or has reason to believe that an unlawful and forcible entry  
19 or unlawful and forcible act is occurring. The legal  
20 presumption that a person using deadly physical force is  
21 justified to do so pursuant to this subdivision does not apply  
22 if:

23           "a. The person against whom the defensive force is  
24 used has the right to be in or is a lawful resident of the  
25 dwelling, residence, or vehicle, such as an owner or lessee,  
26 and there is not an injunction for protection from domestic

1 violence or a written pretrial supervision order of no contact  
2 against that person;

3 "b. The person sought to be removed is a child or  
4 grandchild, or is otherwise in the lawful custody or under the  
5 lawful guardianship of, the person against whom the defensive  
6 force is used;

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

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

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

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

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

23 "(2) He or she was the initial aggressor, except  
24 that his or her use of physical force upon another person  
25 under the circumstances is justifiable if he or she withdraws  
26 from the encounter and effectively communicates to the other  
27 person his or her intent to do so, but the latter person

1 nevertheless continues or threatens the use of unlawful  
2 physical force.

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

5 "(4) a. He or she initially pursued another person  
6 who was engaged in a lawful activity in a public place or in a  
7 place where the person had a right to be and the pursuit  
8 resulted in confrontation and the use of force, including  
9 deadly physical force, against the person initially pursued.

10 "b. Paragraph a. shall be known as the Trayvon  
11 Martin exception.

12 "(d) (1) A person who uses force, including deadly  
13 physical force, as justified and permitted in this section is  
14 immune from criminal prosecution and civil action for the use  
15 of such force, unless the force was determined to be unlawful.

16 "(2) Prior to the commencement of a trial in a case  
17 in which a defense is claimed under this section, the court  
18 having jurisdiction over the case, upon motion of the  
19 defendant, shall conduct a pretrial hearing to determine  
20 whether force, including deadly force, used by the defendant  
21 was justified or whether it was unlawful under this section.  
22 During any pretrial hearing to determine immunity, the  
23 defendant must show by a preponderance of the evidence that he  
24 or she is immune from criminal prosecution.

25 "(3) If, after a pretrial hearing under subdivision  
26 (2), the court concludes that the defendant has proven by a  
27 preponderance of the evidence that force, including deadly

1 force, was justified, the court shall enter an order finding  
2 the defendant immune from criminal prosecution and dismissing  
3 the criminal charges.

4 "(4) If the defendant does not meet his or her  
5 burden of proving immunity at the pre-trial hearing, he or she  
6 may continue to pursue the defense of self-defense or defense  
7 of another person at trial. Once the issue of self-defense or  
8 defense of another person has been raised by the defendant,  
9 the state continues to bear the burden of proving beyond a  
10 reasonable doubt all of the elements of the charged conduct.

11 "(e) An innocent bystander who uses force, including  
12 deadly physical force, who reasonably believes the use of the  
13 force is necessary to protect himself or herself from injury  
14 or harm as a result of a confrontation between other persons  
15 involving the use of force as justified and permitted in this  
16 section, is immune from criminal prosecution and civil action  
17 for the use of the force, unless the force was determined to  
18 be unlawful.

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

24 Section 2. Although this bill would have as its  
25 purpose or effect the requirement of a new or increased  
26 expenditure of local funds, the bill is excluded from further  
27 requirements and application under Amendment 621, now

1 appearing as Section 111.05 of the Official ReCompilation of  
2 the Constitution of Alabama of 1901, as amended, because the  
3 bill defines a new crime or amends the definition of an  
4 existing crime.

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