- 1 HB94
- 2 197283-5
- 3 By Representative Johnson (Constitutional Amendment)
- 4 RFD: Local Legislation
- 5 First Read: 04-FEB-20
- 6 PFD: 02/03/2020

2         3         4       A BILL         5       TO BE ENTITLED         6       AN ACT         7         8       To propose an amendment to the Constitution of         9       Alabama of 1901, relating to Talladega County, to further         10       provide for the justification for a person to use deadly         11       physical force in self-defense or in the defense of another         12       person on the premises of a church under certain conditions.         13       BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:         14       Section 1. The following amendment to the         15       Constitution of Alabama of 1901, is proposed and shall become         16       valid as a part of the Constitution when all requirements of         17       this act are fulfilled:         18       PROPOSED AMENDMENT         19       (a) This amendment shall apply only in Talladega         20       County.         21       (b) The following definitions are applicable to this         23       (1) CHURCH. A bona fide duly constituted religious         24       society or ecclesiastical body of any sect, order, or         25       denomination, or any congregation thereof. <th>1</th> <th>ENGROSSED</th>	1	ENGROSSED
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(2) DEADLY PHYSICAL FORCE. Force which, under the
 circumstances in which it is used, is readily capable of
 causing death or serious physical injury.

4 (3) FORCE. Physical action or threat against5 another, including confinement.

6 (4) PREMISES. The term includes any building, as
7 defined in this section, and any real property.

8 (c) A person may use deadly physical force, and is 9 legally presumed to be justified in using deadly physical 10 force in self-defense or the defense of another person, if the person reasonably believes that another person is using or 11 12 about to use physical force against an employee, volunteer, 13 member of a church, or any other person authorized to be on the premises of the church when the church is open or closed 14 15 to the public while committing or attempting to commit a crime involving death, serious physical injury, robbery in the first 16 17 degree, or kidnapping in the first degree.

(d) A person who is justified under subsection (c) in using deadly physical force, who is not engaged in an unlawful activity, and is in any place where he or she has the right to be, has no duty to retreat and has the right to stand his or her ground.

(e) A person who uses force, including deadly
physical force, as justified and permitted in this amendment
is immune from criminal prosecution and civil action for the
use of such force, unless the force was determined to be

unlawful <u>or in violation of Section 13A-3-21, Code of Alabama</u>
 1975.

(f)(1) Prior to the commencement of a trial in a 3 case in which a defense is claimed under this amendment, the 4 5 court having jurisdiction over the case, upon motion of the defendant, shall conduct a pretrial hearing to determine 6 7 whether deadly force, used by the defendant was justified or whether it was unlawful under this amendment. During any 8 pretrial hearing to determine immunity, the defendant must 9 10 show by a preponderance of the evidence that he or she is immune from criminal prosecution. 11

(2) If, after a pretrial hearing under subdivision
(1), the court concludes that the defendant has proved by a
preponderance of the evidence that force, including deadly
force, was justified, the court shall enter an order finding
the defendant immune from criminal prosecution and dismissing
the criminal charges.

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

(f) A law enforcement agency may use standard
 procedures for investigating the use of force described in
 subsection (c), but the agency may not arrest the person for

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using force unless it determines that there is probable cause
 that the force used was unlawful.

3 Section 2. An election upon the proposed amendment 4 shall be held in accordance with Section 284.01 of the 5 Constitution of Alabama of 1901, now appearing as Section 6 284.01 of the Official Recompilation of the Constitution of 7 Alabama of 1901, as amended, and the election laws of this 8 state.

9 Section 3. The appropriate election official shall 10 assign a ballot number for the proposed constitutional 11 amendment on the election ballot and shall set forth the 12 following description of the substance or subject matter of 13 the proposed constitutional amendment:

14 "Relating to Talladega County, proposing an 15 amendment to the Constitution of Alabama of 1901, to provide 16 that a person is not liable for using deadly physical force in 17 self-defense or in the defense of another person on the 18 premises of a church under certain conditions."

19 "Proposed by Act \_\_\_\_\_."

20 This description shall be followed by the following 21 language:

22 "Yes () No ()."

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2	
3	House of Representatives
4 5 6 7 8	Read for the first time and re- ferred to the House of Representa- tives committee on Local Legisla- tion04-FEB-20
9 10 11	Read for the second time and placed on the calendar 11-FEB-20
12 13	Read for the third time and passed as amended 13-FEB-20
14	Yeas 67, Nays 0, Abstains 30

Jeff Woodard Clerk