

1 HB235
2 182223-1
3 By Representative Coleman
4 RFD: Judiciary
5 First Read: 14-FEB-17

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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, as
21 last amended by Act 2016-420, 2016 Regular Session, to provide
22 that a person is not justified in using physical force if he
23 or she pursued another person engaged in a lawful activity in
24 a public place and the pursuit resulted in a confrontation and
25 the use of force; to provide immunity to innocent bystanders;
26 and in connection therewith would have as its purpose or
27 effect the requirement of a new or increased expenditure of

1 local funds within the meaning of Amendment 621 of the
2 Constitution of Alabama of 1901, now appearing as Section
3 111.05 of the Official Recompilation of the Constitution of
4 Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 13A-3-23, Code of Alabama 1975,
7 as last amended by Act 2016-420, 2016 Regular Session, is
8 amended to read as follows:

9 "§13A-3-23.

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

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

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

25 "(3) Committing or about to commit a kidnapping in
26 any degree, assault in the first or second degree, burglary in

1 any degree, robbery in any degree, forcible rape, or forcible
2 sodomy.

3 "(4) Using or about to use physical force against an
4 owner, employee, or other person authorized to be on business
5 property when the business is closed to the public while
6 committing or attempting to commit a crime involving death,
7 serious physical injury, robbery, kidnapping, rape, sodomy, or
8 a crime of a sexual nature involving a child under the age of
9 12.

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

25 "a. The person against whom the defensive force is
26 used has the right to be in or is a lawful resident of the
27 dwelling, residence, or vehicle, such as an owner or lessee,

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

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

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

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

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

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

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

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

1 person his or her intent to do so, but the latter person
2 nevertheless continues or threatens the use of unlawful
3 physical force.

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

6 "(4) a. He or she initially pursued another person
7 engaged in a lawful activity in a public place and the pursuit
8 resulted in a 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.