HB49

196500-1

By Representatives Greer and Johnson

RFD: Judiciary

First Read: 05-MAR-19

PFD: 02/14/2019
SYNOPSIS: Under existing law, a person is justified in using physical force, including deadly force, in self-defense or in the defense of another person under certain conditions, and an occupant of a dwelling or business property may use deadly physical force, and is legally presumed to be justified in using deadly physical force, in self-defense or the defense of another person against a person committing or attempting to commit certain specified crimes.

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

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a
new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

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

A BILL
TO BE ENTITLED
AN ACT

Relating to self-defense and the defense of others; to amend Sections 13A-3-20 and 13A-3-23, Code of Alabama 1975, to provide that a person is not criminally liable for using physical force, including deadly force, in self-defense or in the defense of another person on the premises of a church under certain conditions; and in connection therewith would
have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

"§13A-3-20.

"The following definitions are applicable to this article:

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

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

"(2)(3) DEADLY PHYSICAL FORCE. Force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
DWELLING. A building which is usually occupied by a person lodging therein at night, or a building of any kind, including any attached balcony, whether the building is temporary or permanent, mobile or immobile, which has a roof over it, and is designed to be occupied by people lodging therein at night.

FORCE. Physical action or threat against another, including confinement.

PREMISES. The term includes any building, as defined in this section, and any real property.

RESIDENCE. A dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

VEHICLE. A motorized conveyance which is designed to transport people or property.

§13A-3-23.

(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (5) (6), if the person reasonably believes that another person is:
"(1) Using or about to use unlawful deadly physical force.

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

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

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

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

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

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

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

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

"d. The person against whom the defensive force is
used is a law enforcement officer acting in the performance of
his or her official duties.
"(b) A person who is justified under subsection (a) in using physical force, including deadly physical force, and 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.

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

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

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

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

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

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

"(3) If, after a pretrial hearing under subdivision (2), the court concludes that the defendant has proven 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.

"(4) If the defendant does not meet his or her burden of proving immunity at the pre-trial 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.

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

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.

Section 4. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.