

1 SB420
2 177151-1
3 By Senator Williams
4 RFD: Judiciary
5 First Read: 19-APR-16

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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 a burglary of the dwelling or other specified
18 crimes.

19 This bill would require a pretrial hearing
20 in which a defendant claiming self-defense must
21 prove by a preponderance of the evidence that the
22 force, including deadly force, was justified. Upon
23 satisfying this burden, the criminal charges would
24 be dismissed.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Section 13A-3-23, Code of Alabama 1975,
4 relating to the use of force in defense of a person, to
5 require a pretrial hearing in which a defendant claiming
6 self-defense must prove by a preponderance of the evidence
7 that the force, including deadly force, was justified; to
8 require the entry of an order dismissing the case under
9 certain conditions; and allowing certain defendants to
10 continue to claim self-defense at trial.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§13A-3-23.

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

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

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

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

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

15 "(5) In the process of unlawfully and forcefully
16 entering, or has unlawfully and forcefully entered, a
17 dwelling, residence, business property, or occupied vehicle,
18 or federally licensed nuclear power facility, or is in the
19 process of sabotaging or attempting to sabotage a federally
20 licensed nuclear power facility, or is attempting to remove,
21 or has forcefully removed, a person against his or her will
22 from any dwelling, residence, business property, or occupied
23 vehicle when the person has a legal right to be there, and
24 provided that the person using the deadly physical force knows
25 or has reason to believe that an unlawful and forcible entry
26 or unlawful and forcible act is occurring. The legal
27 presumption that a person using deadly physical force is

1 justified to do so pursuant to this subdivision does not apply
2 if:

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

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

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

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

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

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

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

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

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

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

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

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

1 preponderance of the evidence that force, including deadly
2 force, was justified, the court shall enter an order finding
3 the defendant immune from criminal prosecution and dismissing
4 the criminal charges.

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

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

17 Section 2. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.