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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB36  
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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 certain specified crimes.

18 This bill would provide that a person is not  
19 criminally liable for using physical force,  
20 including deadly force, in self-defense or in the  
21 defense of another person on the premises of a  
22 church under certain conditions.  
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24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1                   Relating to self-defense and the defense of others;  
2                   to amend Sections 13A-3-20 and 13A-3-23, as amended by Act  
3                   2016-420, 2016 Regular Session, Code of Alabama 1975, to  
4                   provide that a person is not criminally liable for using  
5                   physical force, including deadly force, in self-defense or in  
6                   the defense of another person on the premises of a church  
7                   under certain conditions.

8                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11                  Section 2. Sections 13A-3-20 and 13A-3-23, as  
12                  amended by Act 2016-420, 2016 Regular Session, Code of Alabama  
13                  1975, are amended to read as follows:

14                  "§13A-3-20.

15                  "The following definitions are applicable to this  
16                  article:

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

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

1           "~~(2)~~(3) DEADLY PHYSICAL FORCE. Force which, under  
2 the circumstances in which it is used, is readily capable of  
3 causing death or serious physical injury.

4           "~~(3)~~(4) DWELLING. A building which is usually  
5 occupied by a person lodging therein at night, or a building  
6 of any kind, including any attached balcony, whether the  
7 building is temporary or permanent, mobile or immobile, which  
8 has a roof over it, and is designed to be occupied by people  
9 lodging therein at night.

10           "~~(4)~~(5) FORCE. Physical action or threat against  
11 another, including confinement.

12           "~~(5)~~(6) PREMISES. The term includes any building, as  
13 defined in this section, and any real property.

14           "~~(6)~~(7) RESIDENCE. A dwelling in which a person  
15 resides either temporarily or permanently or is visiting as an  
16 invited guest.

17           "~~(7)~~(8) VEHICLE. A motorized conveyance which is  
18 designed to transport people or property.

19           "§13A-3-23.

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

1 or the defense of another person pursuant to subdivision (5),  
2 if the person reasonably believes that another person is:

3 "(1) Using or about to use unlawful deadly physical  
4 force.

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

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

12 "(4) Using or about to use physical force against an  
13 owner, employee, or other person authorized to be on business  
14 property when the business is closed to the public while  
15 committing or attempting to commit a crime involving death,  
16 serious physical injury, robbery, kidnapping, rape, sodomy, or  
17 a crime of a sexual nature involving a child under the age of  
18 12.

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

26 "~~(5)~~ (6) In the process of unlawfully and forcefully  
27 entering, or has unlawfully and forcefully entered, a

1 dwelling, residence, business property, or occupied vehicle,  
2 or federally licensed nuclear power facility, or is in the  
3 process of sabotaging or attempting to sabotage a federally  
4 licensed nuclear power facility, or is attempting to remove,  
5 or has forcefully removed, a person against his or her will  
6 from any dwelling, residence, business property, or occupied  
7 vehicle when the person has a legal right to be there, and  
8 provided that the person using the deadly physical force knows  
9 or has reason to believe that an unlawful and forcible entry  
10 or unlawful and forcible act is occurring. The legal  
11 presumption that a person using deadly physical force is  
12 justified to do so pursuant to this subdivision does not apply  
13 if:

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

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

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

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

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

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

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

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

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

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

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

10           "(3) If, after a pretrial hearing under subdivision  
11 (2), the court concludes that the defendant has proven by a  
12 preponderance of the evidence that force, including deadly  
13 force, was justified, the court shall enter an order finding  
14 the defendant immune from criminal prosecution and dismissing  
15 the criminal charges.

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

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

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