

1 HB694
2 140220-1
3 By Representatives Coleman, McAdory, Rogers, Robinson (O),
4 Moore (M), Hill, Bracy, Buskey, Kennedy, Grimsley, Melton,
5 Boyd, Warren, Forte, McClammy, McCampbell, Scott and England
6 RFD: Judiciary
7 First Read: 17-APR-12

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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 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

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

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 To amend Section 13A-3-23, Code of Alabama 1975, to
17 provide that a person is not justified in using physical force
18 if he or she pursued another person engaged in a lawful
19 activity in a public place and the pursuit resulted in a
20 confrontation and the use of force; and in connection
21 therewith would have as its purpose or effect the requirement
22 of a new or increased expenditure of local funds within the
23 meaning of Amendment 621 of the Constitution of Alabama of
24 1901, now appearing as Section 111.05 of the Official
25 Recompilation of the Constitution of Alabama of 1901, as
26 amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§13A-3-23.

4 "(a) A person is justified in using physical force
5 upon another person in order to defend himself or herself or a
6 third person from what he or she reasonably believes to be the
7 use or imminent use of unlawful physical force by that other
8 person, and he or she may use a degree of force which he or
9 she reasonably believes to be necessary for the purpose. A
10 person may use deadly physical force, and is legally presumed
11 to be justified in using deadly physical force in self-defense
12 or the defense of another person pursuant to subdivision (4),
13 if the person reasonably believes that another person is:

14 "(1) Using or about to use unlawful deadly physical
15 force.

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

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

23 "(4) In the process of unlawfully and forcefully
24 entering, or has unlawfully and forcefully entered, a
25 dwelling, residence, or occupied vehicle, or federally
26 licensed nuclear power facility, or is in the process of
27 sabotaging or attempting to sabotage a federally licensed

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

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

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

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

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

26 "(b) A person who is justified under subsection (a)
27 in using physical force, including deadly physical force, and

1 who is not engaged in an unlawful activity and is in any place
2 where he or she has the right to be has no duty to retreat and
3 has the right to stand his or her ground.

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

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

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

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

18 "(4) He or she initially pursued another person
19 engaged in a lawful activity in a public place and the pursuit
20 resulted in a confrontation and the use of force, including
21 deadly physical force, against the person initially pursued.

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

26 "(e) A law enforcement agency may use standard
27 procedures for investigating the use of force described in

1 subsection (a), but the agency may not arrest the person for
2 using force unless it determines that there is probable cause
3 that the force used was unlawful."

4 Section 2. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

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