

1 HB441  
2 175305-1  
3 By Representative Hill (J)  
4 RFD: Judiciary  
5 First Read: 17-MAR-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.

25  
26 A BILL  
27 TO BE ENTITLED

1 AN ACT

2  
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 shall conduct a pretrial  
20 hearing to determine whether force, including deadly force,  
21 used by the defendant was justified or whether it was unlawful  
22 under this section. During any pretrial hearing to determine  
23 immunity, the defendant must show by a preponderance of the  
24 evidence that he 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 pretrial hearing, he or she  
6 may continue to pursue the affirmative defense of self-defense  
7 as provided in this section, at trial, which must be proved  
8 beyond a reasonable doubt.

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

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