

1 HB94
2 197283-2
3 By Representative Johnson (Constitutional Amendment)
4 RFD: Local Legislation
5 First Read: 04-FEB-20
6 PFD: 02/03/2020

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8 SYNOPSIS: This bill would propose a local
9 constitutional amendment relating to Talladega
10 County to further provide for the justification for
11 a person to use deadly physical force in
12 self-defense or in the defense of another person on
13 the premises of a church under certain conditions.
14

15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To propose an amendment to the Constitution of
20 Alabama of 1901, relating to Talladega County, to further
21 provide for the justification for a person to use deadly
22 physical force in self-defense or in the defense of another
23 person on the premises of a church under certain conditions.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. The following amendment to the
26 Constitution of Alabama of 1901, is proposed and shall become

1 valid as a part of the Constitution when all requirements of
2 this act are fulfilled:

3 PROPOSED AMENDMENT

4 (a) This amendment shall apply only in Talladega
5 County.

6 (b) The following definitions are applicable to this
7 amendment:

8 (1) CHURCH. A bona fide duly constituted religious
9 society or ecclesiastical body of any sect, order, or
10 denomination, or any congregation thereof.

11 (2) DEADLY PHYSICAL FORCE. Force which, under the
12 circumstances in which it is used, is readily capable of
13 causing death or serious physical injury.

14 (3) FORCE. Physical action or threat against
15 another, including confinement.

16 (4) PREMISES. The term includes any building, as
17 defined in this section, and any real property.

18 (c) A person may use deadly physical force, and is
19 legally presumed to be justified in using deadly physical
20 force in self-defense or the defense of another person, if the
21 person reasonably believes that another person is using or
22 about to use physical force against an employee, volunteer,
23 member of a church, or any other person authorized to be on
24 the premises of the church when the church is open or closed
25 to the public while committing or attempting to commit a crime
26 involving death, serious physical injury, robbery in the first
27 degree, or kidnapping in the first degree.

1 (d) A person who is justified under subsection (c)
2 in using deadly physical force, who is not engaged in an
3 unlawful activity, and is in any place where he or she has the
4 right to be, has no duty to retreat and has the right to stand
5 his or her ground.

6 (e) A person who uses force, including deadly
7 physical force, as justified and permitted in this amendment
8 is immune from criminal prosecution and civil action for the
9 use of such force, unless the force was determined to be
10 unlawful.

11 (f) (1) Prior to the commencement of a trial in a
12 case in which a defense is claimed under this amendment, the
13 court having jurisdiction over the case, upon motion of the
14 defendant, shall conduct a pretrial hearing to determine
15 whether deadly force, used by the defendant was justified or
16 whether it was unlawful under this amendment. During any
17 pretrial hearing to determine immunity, the defendant must
18 show by a preponderance of the evidence that he or she is
19 immune from criminal prosecution.

20 (2) If, after a pretrial hearing under subdivision
21 (1), the court concludes that the defendant has proved by a
22 preponderance of the evidence that force, including deadly
23 force, was justified, the court shall enter an order finding
24 the defendant immune from criminal prosecution and dismissing
25 the criminal charges.

26 (3) If the defendant does not meet his or her burden
27 of proving immunity at the pretrial hearing, he or she may

1 continue to pursue the defense of self-defense or defense of
2 another person at trial. Once the issue of self-defense or
3 defense of another person has been raised by the defendant,
4 the state continues to bear the burden of proving beyond a
5 reasonable doubt all of the elements of the charged conduct.

6 (f) A law enforcement agency may use standard
7 procedures for investigating the use of force described in
8 subsection (c), but the agency may not arrest the person for
9 using force unless it determines that there is probable cause
10 that the force used was unlawful.

11 Section 2. An election upon the proposed amendment
12 shall be held in accordance with Section 284.01 of the
13 Constitution of Alabama of 1901, now appearing as Section
14 284.01 of the Official Recompilation of the Constitution of
15 Alabama of 1901, as amended, and the election laws of this
16 state.

17 Section 3. The appropriate election official shall
18 assign a ballot number for the proposed constitutional
19 amendment on the election ballot and shall set forth the
20 following description of the substance or subject matter of
21 the proposed constitutional amendment:

22 "Relating to Talladega County, proposing an
23 amendment to the Constitution of Alabama of 1901, to provide
24 that a person is not liable for using deadly physical force in
25 self-defense or in the defense of another person on the
26 premises of a church under certain conditions."

27 "Proposed by Act _____."

1 This description shall be followed by the following
2 language:
3 "Yes () No ()."