

1 HB212
2 140220-2
3 By Representative Coleman-Evans
4 RFD: Judiciary
5 First Read: 07-FEB-13

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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 This bill would also provide immunity to
19 innocent bystanders who use force to protect
20 themselves as a result of a confrontation between
21 other persons.

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

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

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To amend Section 13A-3-23, Code of Alabama 1975, to
21 provide that a person is not justified in using physical force
22 if he or she pursued another person engaged in a lawful
23 activity in a public place and the pursuit resulted in a
24 confrontation and the use of force; to provide immunity to
25 innocent bystanders; and in connection therewith would have as
26 its purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as
2 Section 111.05 of the Official ReCompilation of the
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§13A-3-23.

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

18 "(1) Using or about to use unlawful deadly physical
19 force.

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

23 "(3) Committing or about to commit a kidnapping in
24 any degree, assault in the first or second degree, burglary in
25 any degree, robbery in any degree, forcible rape, or forcible
26 sodomy.

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

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

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

25 "c. The person who uses defensive force is engaged
26 in an unlawful activity or is using the dwelling, residence,
27 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 "(4) He or she initially pursued another person
24 engaged in a lawful activity in a public place and the pursuit
25 resulted in a confrontation and the use of force, including
26 deadly physical force, against the person initially pursued.

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

5 "(2) An innocent bystander who uses force, including
6 deadly physical force, who reasonably believes the use of the
7 force is necessary to protect himself or herself from injury
8 or harm as a result of a confrontation between other persons
9 involving the use of force as justified and permitted in this
10 section, is immune from criminal prosecution and civil action
11 for the use of the force, unless the force was determined to
12 be unlawful.

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

18 Section 2. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended, because the
24 bill defines a new crime or amends the definition of an
25 existing crime.

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.