

1 HB135
2 202682-2
3 By Representative Kiel (Constitutional Amendment)
4 RFD: Local Legislation
5 First Read: 04-FEB-20

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following amendment to the Constitution of Alabama of 1901, is proposed and shall become valid as a part of the Constitution when all requirements of this act are fulfilled:

PROPOSED AMENDMENT

(a) This amendment shall apply only in Colbert County.

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

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

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

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

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

3 (c) A person may use deadly physical force, and is
4 legally presumed to be justified in using deadly physical
5 force in self-defense or the defense of another person, if the
6 person reasonably believes that another person is using or
7 about to use physical force against an employee, volunteer,
8 member of a church, or any other person authorized to be on
9 the premises of the church when the church is open or closed
10 to the public while committing or attempting to commit a crime
11 involving death, serious physical injury, robbery in the first
12 degree, or kidnapping in the first degree.

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

18 (e) A person who uses force, including deadly
19 physical force, as justified and permitted in this amendment
20 is immune from criminal prosecution and civil action for the
21 use of such force, unless the force was determined to be
22 unlawful or in violation of Section 13A-3-21, Code of Alabama
23 1975.

24 (f) (1) Prior to the commencement of a trial in a
25 case in which a defense is claimed under this amendment, the

1 court having jurisdiction over the case, upon motion of the
2 defendant, shall conduct a pretrial hearing to determine
3 whether deadly force, used by the defendant was justified or
4 whether it was unlawful under this amendment. During any
5 pretrial hearing to determine immunity, the defendant must
6 show by a preponderance of the evidence that he or she is
7 immune from criminal prosecution.

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

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

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

1 Section 2. An election upon the proposed amendment
2 shall be held in accordance with Section 284.01 of the
3 Constitution of Alabama of 1901, now appearing as Section
4 284.01 of the Official ReCompilation of the Constitution of
5 Alabama of 1901, as amended, and the election laws of this
6 state.

7 Section 3. The appropriate election official shall
8 assign a ballot number for the proposed constitutional
9 amendment on the election ballot and shall set forth the
10 following description of the substance or subject matter of
11 the proposed constitutional amendment:

12 "Relating to Colbert County, proposing an amendment
13 to the Constitution of Alabama of 1901, to provide that a
14 person is not liable for using deadly physical force in
15 self-defense or in the defense of another person on the
16 premises of a church under certain conditions."

17 "Proposed by Act _____."

18 This description shall be followed by the following
19 language:

20 "Yes () No ()."

