

1 HB376
2 147806-1
3 By Representatives Long, Butler, Roberts, Baughn, Barton,
4 Rich, Laird, Bridges, Henry, Clouse and Boothe
5 RFD: Judiciary
6 First Read: 28-FEB-13

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8 SYNOPSIS: Under existing law, an occupant of a
9 dwelling may use deadly physical force, and is
10 legally presumed to be justified in using deadly
11 physical force in self-defense or the defense of
12 another person against a person committing or
13 attempting to commit a burglary of the dwelling.

14 This bill would provide that an owner,
15 employee, or other person authorized to be on
16 business premises after the business has closed to
17 the public may use deadly physical force in
18 self-defense or the defense of another person
19 against a person who is committing or attempting to
20 commit a burglary or robbery of the business.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To amend Section 13A-3-23, Code of Alabama 1975,
27 relating to the use of force in defense of a person, to

1 provide that an owner, employee, or other person authorized to
2 be on business premises after the business has closed to the
3 public may use deadly physical force in self-defense or the
4 defense of another person against a person who is committing
5 or attempting to commit a burglary or robbery of the business.
6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 "§13A-3-23.

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

20 "(1) Using or about to use unlawful deadly physical
21 force.

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

25 "(3) Committing or about to commit a kidnapping in
26 any degree, assault in the first or second degree, burglary in

1 any degree, robbery in any degree, forcible rape, or forcible
2 sodomy.

3 "(4) Using or about to use physical force against an
4 owner, employee, or other person authorized to be on business
5 property when the business is closed to the public while
6 committing or attempting to commit a burglary, theft, or
7 robbery.

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

23 "a. The person against whom the defensive force is
24 used has the right to be in or is a lawful resident of the
25 dwelling, residence, business property, or vehicle, such as an
26 owner or lessee, and there is not an injunction for protection

1 from domestic violence or a written pretrial supervision order
2 of no contact against that person;

3 "b. The person sought to be removed is a child or
4 grandchild, or is otherwise in the lawful custody or under the
5 lawful guardianship of, the person against whom the defensive
6 force is used;

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

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

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

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

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

23 "(2) He or she was the initial aggressor, except
24 that his or her use of physical force upon another person
25 under the circumstances is justifiable if he or she withdraws
26 from the encounter and effectively communicates to the other
27 person his or her intent to do so, but the latter person

1 nevertheless continues or threatens the use of unlawful
2 physical force.

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

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

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.