

1 HB536
2 200238-2
3 By Representative Kiel (Constitutional Amendment)
4 RFD: Local Legislation
5 First Read: 30-APR-19

SYNOPSIS: This bill would propose a local constitutional amendment relating to Franklin 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.

A BILL
TO BE ENTITLED
AN ACT

To propose an amendment to the Constitution of Alabama of 1901, relating to Franklin 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

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 Franklin
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 or in violation of Section 13A-3-21, Code of Alabama
11 1975.

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

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

1 (3) If the defendant does not meet his or her burden
2 of proving immunity at the pretrial hearing, he or she may
3 continue to pursue the defense of self-defense or defense of
4 another person at trial. Once the issue of self-defense or
5 defense of another person has been raised by the defendant,
6 the state continues to bear the burden of proving beyond a
7 reasonable doubt all of the elements of the charged conduct.

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

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

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

24 "Relating to Franklin County, proposing an amendment
25 to the Constitution of Alabama of 1901, to provide that a
26 person is not liable for using deadly physical force in

1 self-defense or in the defense of another person on the
2 premises of a church under certain conditions."

3 "Proposed by Act _____."

4 This description shall be followed by the following
5 language:

6 "Yes () No ()."