

1 HB34
2 188773-2
3 By Representatives Greer and Rowe
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 11/28/2017

1 more units separately occupied or secured is a separate
2 building.

3 "(2) CHURCH. A bona fide duly constituted religious
4 society or ecclesiastical body of any sect, order, or
5 denomination, or any congregation thereof.

6 "(2)(3) DEADLY PHYSICAL FORCE. Force which, under
7 the circumstances in which it is used, is readily capable of
8 causing death or serious physical injury.

9 "(3)(4) DWELLING. A building which is usually
10 occupied by a person lodging therein at night, or a building
11 of any kind, including any attached balcony, whether the
12 building is temporary or permanent, mobile or immobile, which
13 has a roof over it, and is designed to be occupied by people
14 lodging therein at night.

15 "(4)(5) FORCE. Physical action or threat against
16 another, including confinement.

17 "(5)(6) PREMISES. The term includes any building, as
18 defined in this section, and any real property.

19 "(6)(7) RESIDENCE. A dwelling in which a person
20 resides either temporarily or permanently or is visiting as an
21 invited guest.

22 "(7)(8) VEHICLE. A motorized conveyance which is
23 designed to transport people or property.

24 "§13A-3-23.

25 "(a) A person is justified in using physical force
26 upon another person in order to defend himself or herself or a
27 third person from what he or she reasonably believes to be the

1 use or imminent use of unlawful physical force by that other
2 person, and he or she may use a degree of force which he or
3 she reasonably believes to be necessary for the purpose. A
4 person may use deadly physical force, and is legally presumed
5 to be justified in using deadly physical force in self-defense
6 or the defense of another person pursuant to subdivision ~~(5)~~
7 6, if the person reasonably believes that another person is:

8 "(1) Using or about to use unlawful deadly physical
9 force.

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

13 "(3) Committing or about to commit a kidnapping in
14 any degree, assault in the first or second degree, burglary in
15 any degree, robbery in any degree, forcible rape, or forcible
16 sodomy.

17 "(4) Using or about to use physical force against an
18 owner, employee, or other person authorized to be on business
19 property when the business is closed to the public while
20 committing or attempting to commit a crime involving death,
21 serious physical injury, robbery, kidnapping, rape, sodomy, or
22 a crime of a sexual nature involving a child under the age of
23 12.

24 "(5) Using or about to use physical force against an
25 employee, volunteer, or member of a church or any other person
26 authorized to be on the premises of the church when the church
27 is open or closed to the public while committing or attempting

1 to commit a crime involving death, serious physical injury,
2 robbery, kidnapping, rape, sodomy, or a crime of a sexual
3 nature involving a child under the age of 12.

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

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

25 "b. The person sought to be removed is a child or
26 grandchild, or is otherwise in the lawful custody or under the

1 lawful guardianship of, the person against whom the defensive
2 force is used;

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

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

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

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

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

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

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

1 "(d) (1) ~~A~~ Except as provided in Section 13A-3-21, a
2 person who uses force, including deadly physical force, as
3 justified and permitted in this section is immune from
4 criminal prosecution and civil action for the use of such
5 force, unless the force was determined to be unlawful.

6 "(2) Prior to the commencement of a trial in a case
7 in which a defense is claimed under this section, the court
8 having jurisdiction over the case, upon motion of the
9 defendant, shall conduct a pretrial hearing to determine
10 whether force, including deadly force, used by the defendant
11 was justified or whether it was unlawful under this section.
12 During any pretrial hearing to determine immunity, the
13 defendant must show by a preponderance of the evidence that he
14 or she is immune from criminal prosecution.

15 "(3) If, after a pretrial hearing under subdivision
16 (2), the court concludes that the defendant has proven by a
17 preponderance of the evidence that force, including deadly
18 force, was justified, the court shall enter an order finding
19 the defendant immune from criminal prosecution and dismissing
20 the criminal charges.

21 "(4) If the defendant does not meet his or her
22 burden of proving immunity at the pre-trial hearing, he or she
23 may continue to pursue the defense of self-defense or defense
24 of another person at trial. Once the issue of self-defense or
25 defense of another person has been raised by the defendant,
26 the state continues to bear the burden of proving beyond a
27 reasonable doubt all of the elements of the charged conduct.

1 "(e) A law enforcement agency may use standard
2 procedures for investigating the use of force described in
3 subsection (a), but the agency may not arrest the person for
4 using force unless it determines that there is probable cause
5 that the force used was unlawful."

6 Section 3. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-		
ferred to the House of Representa-		
tives committee on Judiciary		09-JAN-18
Read for the second time and placed		
on the calendar 1 amendment		01-FEB-18
Read for the third time and passed		
as amended.....		15-FEB-18
Yeas 60, Nays 15, Abstains 0		

Jeff Woodard
Clerk