~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 3, 2016

**H. 4703**

Introduced by Reps. Delleney, D.C. Moss, Simrill, G.R. Smith, Finlay, McCoy, Bannister, Lucas, Pope, Bedingfield and Pitts

S. Printed 2/3/16--H.

Read the first time January 20, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4703) to amend Section 16‑11‑450, Code of Laws of South Carolina, 1976, relating to immunity from criminal prosecution and civil actions under certain circumstances for the use, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 16‑11‑450, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO IMMUNITY FROM CRIMINAL PROSECUTION AND CIVIL ACTIONS UNDER CERTAIN CIRCUMSTANCES FOR THE USE OF DEADLY FORCE AGAINST ANOTHER PERSON WHO ENTERS A DWELLING, RESIDENCE, OR OCCUPIED VEHICLE, SO AS TO PROVIDE A PROCEDURE FOR AN EVIDENTIARY HEARING ON A PRETRIAL MOTION TO DISMISS BASED ON THE JUSTIFIABLE USE OF DEADLY FORCE AND TO PROVIDE THAT A COURT JUDGMENT, ORDER, OR DECREE DENYING IMMUNITY IS IMMEDIATELY APPEALABLE; AND TO AMEND SECTION 14‑3‑330, AS AMENDED, RELATING TO THE APPELLATE JURISDICTION OF THE SUPREME COURT, SO AS TO INCLUDE THE REVIEW UPON APPEAL OF ANY JUDGMENT, ORDER, OR DECREE DENYING IMMUNITY FROM CRIMINAL PROSECUTION OR CIVIL ACTION PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT THAT IS NOT OTHERWISE A FINAL JUDGMENT THAT DETERMINES THE ACTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑11‑450 of the 1976 Code, as added by Act 379 of 2006, is amended to read:

“Section 16‑11‑450. (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

(B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

(C) The court shall award reasonable attorneys’ fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

(D) A defendant is entitled to an evidentiary hearing on a pretrial motion to dismiss an indictment or information by making a prima facie showing of the justifiable use of deadly force. During the hearing, the State bears the burden of proving by a preponderance of the evidence that the defendant’s use of deadly force was not lawful. For purposes of the motion, the judge shall decide all factual disputes relating to the defendant’s use of deadly force, but these findings are not binding in any subsequent trial. The factual findings at the hearing do not preclude the defendant from raising a defense or presenting evidence at trial. A defendant’s failure to prevail on a motion to dismiss pursuant to this section does not preclude the defendant from raising self‑defense or any other defense at trial. A court judgment, order, or decree denying a defendant immunity that is not otherwise a final judgment that determines the action is immediately appealable.”

SECTION 2. Section 14‑3‑330 of the 1976 Code, as last amended by Act 115 of 1991, is further amended to read:

“Section 14‑3‑330. The Supreme Court ~~shall have~~ has appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) any intermediate judgment, order, or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from ~~such~~ final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) an order affecting a substantial right made in an action when ~~such~~ the order:

(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action~~,~~;

(b) grants or refuses a new trial; or

(c) strikes out an answer or any part ~~thereof~~ of an answer or any pleading in any action;

(3) a final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; ~~and~~

(4) an interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver; and

(5) any judgment, order, or decree denying immunity from criminal prosecution or civil action pursuant to Article 6, Chapter 11, Title 16, that is not otherwise a final judgment that determines the action.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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