

SENATE BILL 861

By Roberts

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 11, Part 6 and Title 39, Chapter 17, Part 13, relative to civil and criminal immunity.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-11-622, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) As used in this subsection (a), "criminal prosecution" includes arresting, detaining in custody, charging, indicting, prosecuting, or otherwise taking adverse action against the person under any local, state, or federal law or ordinance.

(2) A person who uses or threatens to use force as permitted by §§ 39-11-611 - 39-11-614 and § 29-34-201 is justified in threatening or using force and is immune from criminal prosecution by the state and civil action by the person, personal representative, or heirs of the person against whom the force was used or threatened if the prosecution or civil action is based upon the use or threatened use of force.

(3) The criminal and civil immunity conferred by this section shall not apply if the person against whom force was used is a law enforcement officer, as defined in § 39-11-106, who:

(A) Was acting in the performance of the officer's official duties and identified himself or herself as a law enforcement officer; or

(B) The person using force knew or reasonably should have known that the person was a law enforcement officer.

(b) A law enforcement agency, including a district attorney's office, may use standard procedures for investigating the use or threatened use of force as described in subdivision (a)(2), but the law enforcement agency may not charge, indict, or arrest the person for using or threatening to use force unless the agency determines that there is clear and convincing evidence, beyond a determination of mere probable cause, that the force used or threatened was unlawful.

(c) No court shall issue an arrest warrant, citation, or summons for the person who used or threatened to use force unless it affirmatively finds by clear and convincing evidence, beyond a determination of probable cause, that the force used or threatened was unlawful.

(d)

(1) If a civil action is brought against the person who used or threatened to use force as described in subdivision (a)(2), the action shall be dismissed without prejudice for failure to state a claim unless the person against whom the claim has been made has been convicted of a crime involving the unlawful use of force that resulted from the same events as the civil action.

(2) A civil action may be brought against a person convicted of a crime involving the unlawful use of force and arising from the same incident as the civil action within one (1) year of the date of the conviction for the use of unlawful force resulting from the same events. Notwithstanding any other statute of limitation or statute of repose that might otherwise be applicable, the one-year statute of limitation established by this subdivision (d)(2) shall be tolled from the time force was used or threatened until the conviction for the unlawful use of force.

(e) The court in which the civil action is filed shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that:

(1) The defendant is immune from civil liability as provided in subdivision

(a)(2); or

(2) A claim is dismissed as provided in subdivision (d)(1).

(f) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any criminal action brought by an individual, entity, or agency if the court finds that:

(1) The defendant is immune from prosecution as provided in subdivision

(a)(2); and

(2) The prosecution was initiated in violation of subsection (c).

SECTION 2. Tennessee Code Annotated, Section 39-17-1322, is amended by deleting the section and substituting instead the following:

A person who possesses, displays, or employs a firearm under circumstances permitted in §§ 39-11-611 - 39-11-614 and § 29-34-201 is justified in possessing, displaying or employing the firearm and is immune from criminal prosecution by the state and civil action as provided in § 39-11-622.

SECTION 3. This act shall take effect July 1, 2017, the public welfare requiring it.