

Amendment No. 1 to HB2660

Curcio
Signature of Sponsor

AMEND Senate Bill No. 2527

House Bill No. 2660*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-11-622, is amended by deleting subsection (b) and substituting instead the following:

(b) As used in this section:

(1) "Defendant" means a person who uses or threatens to use force against another and asserts that the force used or threatened is permitted by §§ 39-11-611 – 39-11-614 or § 29-34-201; and

(2) "Plaintiff" means the person, personal representative, or heirs of a person against whom force was used or threatened who files a civil action against the defendant that is based upon the same facts or set of events that resulted in the use or threatened use of force.

(c)

(1) If a criminal investigation or criminal proceedings are conducted based upon the defendant's use or threatened use of force, a civil action that is based upon the defendant's use or threatened use of force or the results of the defendant's use or threatened use of force may not proceed until the conclusion of the criminal investigation or criminal proceeding, if a stay of the proceedings is requested by the defendant. If the defendant requests a stay of proceedings and the court determines that a relevant criminal investigation or criminal proceeding is ongoing, the court shall grant a stay of proceedings until the conclusion of the criminal investigation or criminal proceeding.

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(2) A criminal investigation or criminal proceeding shall be deemed concluded if:

(A) The charge or charges against the defendant are dismissed or retired based on the merits of the case;

(B) A no true bill is returned by a grand jury on the charge or charges against the defendant;

(C) A verdict is returned, whether by the judge following a bench trial or by a jury; or

(D) The defendant is arrested and released without being charged and the district attorney general or chief officer of the investigating law enforcement agency provides the court with written notification that the defendant will not be charged with an offense or the investigation is no longer actively occurring.

(d) If a plaintiff files a civil action against a defendant based upon the same facts or set of events that resulted in the use or threatened use of force, then the defendant may assert in any responsive pleading or by motion in writing pursuant to the Rules of Civil Procedure that:

(1) The defendant's use of force or threatened use of force was justified and permitted by §§ 39-11-611 – 39-11-614 or § 29-34-201;

(2) The defendant has immunity from civil liability pursuant to this section;

(3) Because of the defendant's immunity from civil liability, the claim does not state a cause of action upon which relief can be granted; and

(4) The defendant requests a hearing to determine if the civil action should be dismissed for this reason.

(e)

(1) If a hearing is requested, or ordered upon the court's own motion, the court shall expedite the hearing and hear the matter and issue a decision within forty (40) days of the hearing being requested or ordered. Either party may request additional time beyond the forty-day period to prepare, in which case the court shall order, for good cause shown, that the hearing be reset on the first docket following the time period granted for the stay.

(2) From the time the hearing is ordered, all aspects of and procedures relating to the civil action shall be stayed.

(3) All applicable parties shall be given notice and may appear and present evidence at the hearing. The sole issue at the hearing is whether the defendant used force or threatened the use of force in a manner permitted by §§ 39-11-611 – 39-11-614 or § 29-34-201 and is therefore immune from civil liability pursuant to this section.

(4) The burden of proof at the hearing shall be initially on the defendant to present sufficient admissible evidence to fairly raise the issue of whether the use of force was justified under §§ 39-11-611 – 39-11-614 or § 29-34-201. If the court finds that the permissible use of force has been fairly raised, a presumption of immunity is created and the burden of proof shifts to the plaintiff to demonstrate that civil liability is not barred by this section.

(5)

(A) If the court determines by a preponderance of evidence that the defendant's use of force or threatened use of force was justified under §§ 39-11-611 – 39-11-614 or § 29-34-201, the court shall dismiss the civil action with prejudice for failure to state a claim upon which relief can be granted and may issue other orders consistent with the defendant's immunity from civil liability conferred by subsection (a).

(B) If the court determines that the defendant is not entitled to immunity from civil liability under this subsection (e), the action shall remain stayed pursuant to subdivision (c)(1). Once the criminal investigation or criminal proceeding is concluded and the stay is lifted, the civil action may continue. The defendant shall not be precluded from asserting at any other point in the civil action that the use of force was justified.

(f) If the court dismisses the civil action pursuant to subdivision (e)(5)(A) or otherwise determines that the defendant is entitled to immunity from civil liability under this section, the court shall award the defendant attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of the civil action.

SECTION 2. This act shall take effect July 1, 2020, the public welfare requiring it, and shall apply to civil actions filed on or after that date.