

HOUSE BILL 2346

By Calfee

AN ACT to amend Tennessee Code Annotated, Title 58,
Chapter 1, relative to the immunity of a member of
the national guard under certain circumstances.

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

SECTION 1. Tennessee Code Annotated, Section 58-1-227, is amended by adding the following as a new subsection:

(c)

(1) A member of the national guard is immune from any civil action in which damages are sought for conduct of the guard member that resulted in the injury, death, or other personal or property loss of another.

(2) The immunity conferred in subdivision (c)(1) shall only apply if the guard member:

(A) Is on-duty or in uniform;

(B) Is authorized to carry a handgun pursuant to § 39-17-1351;

(C) Is authorized by the military department to carry a personally owned handgun while on-duty or in uniform;

(D) Uses a personal handgun in the line of duty in a manner that injures, kills, or results in real or personal property damage to another;
and

(E) Is found by the district attorney general, grand jury, or a court of competent jurisdiction to have acted in self-defense under § 39-11-611; provided, however, if there is no criminal proceeding in which to raise the defense of self-defense, it may be raised as a preliminary matter in the

civil action, at which time the judge shall consider whether the guard member acted in self-defense under § 39-11-611, using the same definitions and standards as are set out in § 39-11-611.

(3) If the trier of fact in a criminal proceeding, or civil action if there is no criminal proceeding, that is based upon a death, injury, loss, or other damages sustained by the guard member's use of a personal handgun while on duty finds that the guard member qualifies for immunity under this subsection (c), the criminal proceeding, if there is one, and the civil action shall be dismissed and all costs taxed against the plaintiff.

(4) If the trier of fact in a criminal proceeding, or civil action if there is no criminal proceeding, that is based upon a death, injury, loss, or other damages sustained by the guard member's use of a personal handgun while on duty finds that the guard member does not qualify for immunity under this subsection (c), the criminal proceeding, if there is one, and the civil action shall proceed.

(5) Regardless of whether the member of the national guard is immune or liable under this subsection (c), that determination shall not affect the immunity of the national guard, unless the national guard's conduct was grossly negligent or intentional in allowing the guard member to carry a personal firearm or in the supervision of the guard member.

(6) The immunity conferred by this subsection (c) shall only apply to the person or persons against whom the guard member engages in self-defense. The guard member shall not be immune for death, injury, loss, or other damages caused to an innocent bystander or a third party who was not criminally responsible for, and was not the intended object of, the guard member's use of force.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.