

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1052

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Justifiable Use of Force

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1052 corrects an inconsistency in law caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person’s dwelling, residence, or vehicle. The relevant provision now states, “A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat” and has the right to use or threaten to use defensive force.

As a result of the inconsistency, the statute implies that a person’s rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force are clear—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person’s use of unlawful force.

Accordingly, the bill revises s. 776.013(3), F.S., to delete the word “attacked” and make the subsection more consistent with the other statutory provisions governing the right to use defensive force.

II. Present Situation:

Stand Your Ground law

In 2005, the Legislature enacted into law chapter 2005-27, Laws of Fla., commonly known as the “Stand Your Ground” (SYG) law. The law expanded the common law Castle Doctrine and abrogated the common law duty to retreat on the part of the defender. These changes were incorporated into chapter 776, F.S., which governs the justifiable use of force.

The Castle Doctrine and Home Protection

The Castle Doctrine, a doctrine dating back to common law, provided that when faced with an intruder, a person had no duty to retreat from his or her home, the proverbial “castle.” Rather, the defender had the right to stay in the home and protect himself or herself with force, including deadly force.¹

The SYG law expanded the concept of the Castle Doctrine in two main ways. First, the law extended the concept of a person’s “castle” to include a dwelling, residence, or occupied vehicle.² As a result, a person who acts in self-defense in this expanded castle generally has no duty to retreat before acting in self-defense.

Second, the SYG law created a presumption that a person within a “castle” has a reasonable fear of imminent peril of death or great bodily harm if two conditions are met.³ First, the intruder must have entered or be in the process of unlawfully and forcibly entering the dwelling, residence, or occupied vehicle or be attempting to forcibly remove a person. Second, the defender must know or had reason to believe that an unlawful and forcible entry had occurred or was occurring.⁴

Defense of Self or Others

The 2005 changes to the self-defense law also generally eliminated the duty to retreat before using force outside of a person’s dwelling, residence, or occupied vehicle. When acting in self-defense or in defense of others, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes the force is necessary to defend himself or herself or another against an imminent use of unlawful force.⁵ The person may use deadly force, if the person reasonably believes the force is necessary to prevent imminent death or great bodily harm to himself or herself. However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.⁶

¹ *Recent Development: Florida Legislation; Florida Legislation—The Controversy over Florida’s New “Stand Your Ground” Law—Fla. Stat. S. 776.013(2005)*, 33 FLA. ST. U.L.REV. 351, 355 (Fall 2005).

² Section 776.013(5), F.S., defines a dwelling as a temporary or permanent building or conveyance of any kind, including an attached porch with or without a roof, mobile or immobile, including a tent, provided that it is designed for nighttime lodging. A residence is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. A vehicle is a conveyance of any kind, whether or not motorized provided that it is designed to transport people or property.

³ Conversely, s. 776.013(4), F.S., presumes that a person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle intends to commit an unlawful act involving force or violence.

⁴ Section 776.013(1) and (2), F.S. The presumption does not apply if the person against whom defensive force is used or threatened has the right to be in or is a lawful resident of the location and against whom there is no injunction for protection; the person sought to be removed is in the lawful custody or guardianship of the person against whom the defensive force is used or threatened; the person who uses or threatens to use defensive force is committing a crime or using the location to further a criminal act; or the person against whom defensive force is used or threatened is a law enforcement officer entering the premises pursuant to an official duty and who identifies him or herself as a law enforcement officer. Section 776.013(2), F.S.

⁵ Section 776.012(1), F.S.

⁶ Section 776.012(2), F.S.

Defense of Property

When acting in defense of property, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes that the force is necessary to stop a trespasser's entry on personal or real property other than a dwelling.⁷ A person may use deadly force, if the person reasonably believes deadly force is needed to prevent a forcible felony.⁸ However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.⁹

Stand Your Ground Law in other States

At least 22 states have a version of the Stand Your Ground law. These laws provide that a defender does not have a duty to retreat from an attacker in any place in which the defender is lawfully present.¹⁰ These states having SYG laws include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.¹¹ Nine of these states have adopted laws with specific language providing that a person may stand his or her ground.¹²

2014 Changes to Laws Governing the Justifiable Use of Force

In 2014, the Legislature revised chapter 776, F.S., which governs the justifiable use of force and includes the SYG law.¹³ The main change to the chapter was to clarify that a person who can lawfully use force in self-defense may also threaten to use force in self-defense. Further, the changes provided that a person who lawfully threatens to use force in self-defense retains all the rights and immunities under the SYG law.

However, the changes to s. 776.013(3), F.S., which authorize a person to threaten to use defensive force in his or her dwelling, residence, or vehicle contain an apparent drafting error. This error could cause the statute to be read to require that a person be attacked before he or she has the right to use defensive force. The problematic revisions to the 2014 legislation are shown below:

⁷ Section 776.031(1), F.S.

⁸ A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

⁹ Section 776.031(2), F.S.

¹⁰ *Self-defense and "Stand Your Ground,"* National Conference of State Legislatures (Aug. 30, 2013).

<http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx> (last visited Jan. 10, 2017).

¹¹ Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18, s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

¹² States including Stand Your Ground language in self-defense laws are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C)).

¹³ Chapter 2014-195, Laws of Fla.

(3) A person ~~who is not engaged in an unlawful activity and who is attacked in his or her dwelling, residence, or vehicle in any other place where he or she has a right to be~~ has no duty to retreat and has the right to stand his or her ground and use or threaten to use ~~meet force with~~ force, including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2) ~~reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.~~

A requirement that a person be attacked before he or she has the right to use or threaten to use force in self-defense is inconsistent with other provisions of chapter 776, F.S. These other provisions clearly indicate that the right to use force or threaten to use force in self-defense begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.¹⁴

III. Effect of Proposed Changes:

This bill clarifies, s. 776.013, F.S., the statute that defines a person's rights to self-defense when the person is in a dwelling, residence, or vehicle.

Currently, s. 776.013(3), F.S., contains a provision that is inconsistent with other provisions of chapter 776, F.S., which govern the right to self-defense. The problematic language states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force.

As written, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force are clear—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

Accordingly, the bill revises s. 776.013(3), F.S., to delete the word "attacked" and make the subsection more consistent with the other statutory provisions governing the right to use defensive force.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁴ See ss. 776.012, 776.013(1) and 4, and 776.031, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The changes made by the bill minimize the risk that s. 776.013(3), F.S., can be read out of context with the other provisions of chapter 776, F.S., and used as the basis for arresting a person who lawfully uses force in self-defense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.013, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 22, 2017

The CS replaces the substance of the original bill with an amendment to s. 776.013, F.S., to delete the word “attacked.”

B. Amendments:

None.