

Bill No. SB 436

Barcode 191782

CHAMBER ACTION

Senate

House

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The Committee on Criminal Justice (Smith) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 776.013, Florida Statutes, is created to read:

776.013 Home protection; use of deadly force; presumption of fear of death or bodily injury.--

(1) A person is presumed to have held a reasonable fear of imminent peril of death or bodily injury to himself or herself or another when using defensive force that is intended or likely to cause death or bodily injury to another if:

(a) The person against whom the defensive force was used had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or attempted to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had

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1 reason to believe that an unlawful or forcible entry or
2 unlawful or forcible act had occurred.

3 (2) The presumption set forth in subsection (1) is
4 inapplicable if:

5 (a) The person against whom the defensive force is
6 used is an owner, lessee, or titleholder of the dwelling,
7 residence, or vehicle and there is not an injunction for
8 protection from domestic violence against that person;

9 (b) The person or persons sought to be removed is a
10 child or grandchild, or is otherwise in the lawful custody or
11 under the lawful guardianship of, the person against whom the
12 defensive force is used; or

13 (c) The person who uses defensive force was engaged in
14 an unlawful activity or using the dwelling, residence, or
15 occupied vehicle to further an unlawful activity.

16 (3) A person who is attacked in any other place where
17 he or she has a right to be has no duty to retreat and has the
18 right to stand his or her ground and meet force with force,
19 including deadly force, if it is reasonably necessary to do so
20 to prevent death or great bodily harm to himself or herself or
21 another or to prevent the commission of a forcible felony.

22 (4) A person who unlawfully and by force enters or
23 attempts to enter a person's dwelling, residence, or occupied
24 vehicle is presumed to be doing so with the intent to commit
25 an unlawful act involving force or violence.

26 (5) As used in this section, the term:

27 (a) "Dwelling" means a building or conveyance of any
28 kind, including any attached porch, whether the building or
29 conveyance is temporary or permanent, mobile or immobile,
30 which has a roof over it, including a tent, and is designed to
31 be occupied by people lodging therein at night.

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1 (b) "Residence" means a dwelling in which a person
2 resides either temporarily or permanently or is visiting as an
3 invited guest.

4 (c) "Vehicle" means a conveyance of any kind, whether
5 or not motorized, which is designed to transport people or
6 property.

7 Section 2. Section 776.012, Florida Statutes, is
8 amended to read:

9 776.012 Use of force in defense of person.--A person
10 is justified in using the use of force that is intended or
11 likely to cause death or bodily injury, except deadly force,
12 against another when and to the extent that the person
13 reasonably believes that such conduct is necessary to defend
14 himself or herself or another against the such other's
15 imminent use of unlawful force. However, the person is
16 justified in the use of deadly force only if he or she
17 reasonably believes that such force is necessary to prevent
18 imminent death or great bodily harm to himself or herself or
19 another or to prevent the imminent commission of a forcible
20 felony. A person does not have a duty to retreat under the
21 circumstances described in s. 776.013.

22 Section 3. Section 776.031, Florida Statutes, is
23 amended to read:

24 776.031 Use of force in defense of others.--A person
25 is justified in the use of force, except deadly force, against
26 another when and to the extent that the person reasonably
27 believes that such conduct is necessary to prevent or
28 terminate the such other's trespass on, or other tortious or
29 criminal interference with, either real property other than a
30 dwelling or personal property, lawfully in his or her
31 possession or in the possession of another who is a member of

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1 his or her immediate family or household or of a person whose
 2 property he or she has a legal duty to protect. However, the
 3 person is justified in the use of deadly force only if he or
 4 she reasonably believes that such force is necessary to
 5 prevent the imminent commission of a forcible felony. A person
 6 does not have a duty to retreat if the person is in a place
 7 where he or she has a right to be.

8 Section 4. Section 776.032, Florida Statutes, is
 9 created to read:

10 776.032 Immunity from criminal prosecution and civil
 11 action for justifiable use of force.--

12 (1) A person who uses force as described in s.
 13 776.012, s. 776.013, or s. 776.031 is justified in using such
 14 force and is immune from criminal prosecution and civil action
 15 for the use of such force. As used in this subsection, the
 16 term "criminal prosecution" includes wrongfully arresting,
 17 detaining in custody, and charging or prosecuting the
 18 defendant.

19 (2) A law enforcement agency may use standard
 20 procedures for investigating the use of force as described in
 21 subsection (1), but the agency may not arrest the person for
 22 using force unless it determines that there is clear and
 23 convincing evidence that the force that was used was unlawful.

24 (3) The court shall award reasonable attorney's fees,
 25 court costs, compensation for loss of income, and all expenses
 26 incurred by the defendant in defense of any civil action
 27 brought by a plaintiff if the court finds that the defendant
 28 is immune from prosecution as provided in subsection (1).

29 Section 5. This act shall take effect October 1, 2005.
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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

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5 and insert:

6 A bill to be entitled

7 An act relating to the protection of persons

8 and property; creating s. 776.013, F.S.;

9 authorizing a person to use force, including

10 deadly force, against an intruder or attacker

11 in a dwelling, residence, or vehicle under

12 specified circumstances; creating a presumption

13 that a reasonable fear of death or bodily

14 injury exists under certain circumstances;

15 creating a presumption that a person acts with

16 the intent to use force or violence under

17 specified circumstances; providing definitions;

18 amending ss. 776.012 and 776.031, F.S.;

19 providing that a person is justified in using

20 deadly force under certain circumstances;

21 declaring that a person has no duty to retreat

22 and has the right to stand his or her ground

23 and meet force with force if the person is in a

24 place where he or she has a right to be and the

25 force is necessary to prevent death, great

26 bodily harm, or the commission of a forcible

27 felony; creating s. 776.032, F.S.; providing

28 immunity from criminal prosecution or civil

29 action for using deadly force; defining the

30 term "criminal prosecution"; authorizing a law

31 enforcement agency to investigate the use of

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1 deadly force but prohibiting the agency from
2 arresting the person unless the agency
3 determines that there is clear and convincing
4 evidence that the force the person used was
5 unlawful; providing for the award of attorney's
6 fees, court costs, compensation for loss of
7 income, and other expenses to a defendant in a
8 civil suit who was immune from prosecution
9 under this section; providing an effective
10 date.

11
12 WHEREAS, the Legislature finds that it is proper for
13 law-abiding people to protect themselves, their families, and
14 others from intruders and attackers without fear of
15 prosecution or civil action for acting in defense of
16 themselves and others, and

17 WHEREAS, the castle doctrine is a common-law doctrine
18 of ancient origins which declares that a man's home is his
19 castle, and

20 WHEREAS, Section 8 of Article I of the State
21 Constitution guarantees the right of the people to bear arms
22 in defense of themselves, and

23 WHEREAS, the persons residing in or visiting this state
24 have a right to expect to remain unmolested within their homes
25 or vehicles, and

26 WHEREAS, no person or victim of crime should be
27 required to surrender his or her personal safety to a
28 criminal, nor should a person or victim be required to
29 needlessly retreat in the face of intrusion or attack, NOW,
30 THEREFORE,

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