

Bill No. CS for SB 436

Barcode 662002

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Baker and Villalobos) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 2, line 6, through page 6, line 24, delete those lines

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 great bodily harm.--

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

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was

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1 attempting to remove another against that person's will from  
2 the dwelling, residence, or occupied vehicle; and

3 (b) The person who uses defensive force knew or had  
4 reason to believe that an unlawful and forcible entry or  
5 unlawful and forcible act was occurring or had occurred.

6 (2) The presumption set forth in subsection (1) does  
7 not apply if:

8 (a) The person against whom the defensive force is  
9 used has the right to be in or is a lawful resident of the  
10 dwelling, residence, or vehicle, such as an owner, lessee, or  
11 titleholder, and there is not an injunction for protection  
12 from domestic violence or a written pretrial supervision order  
13 of no contact against that person; or

14 (b) The person or persons sought to be removed is a  
15 child or grandchild, or is otherwise in the lawful custody or  
16 under the lawful guardianship of, the person against whom the  
17 defensive force is used; or

18 (c) The person who uses defensive force is engaged in  
19 an unlawful activity or is using the dwelling, residence, or  
20 occupied vehicle to further an unlawful activity; or

21 (d) The person against whom the defensive force is  
22 used is a law enforcement officer, as defined in s. 943.10,  
23 who enters or attempts to enter a dwelling, residence, or  
24 vehicle in the performance of his or her official duties and  
25 the officer identified himself or herself in accordance with  
26 any applicable law or the person using force knew or  
27 reasonably should have known that the person entering or  
28 attempting to enter was a law enforcement officer.

29 (3) A person who is attacked in any other place where  
30 he or she has a right to be has no duty to retreat and has the  
31 right to stand his or her ground and meet force with force,

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1 including deadly force if he or she reasonably believes it is  
2 necessary to do so to prevent death or great bodily harm to  
3 himself or herself or another or to prevent the commission of  
4 a forcible felony.

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

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

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

15 (b) "Residence" means a dwelling in which a person  
16 resides either temporarily or permanently or is visiting as an  
17 invited guest.

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

21 Section 2. Section 776.012, Florida Statutes, is  
22 amended to read:

23 776.012 Use of force in defense of person.--A person  
24 is justified in using ~~the use of~~ force, except deadly force,  
25 against another when and to the extent that the person  
26 reasonably believes that such conduct is necessary to defend  
27 himself or herself or another against the ~~such~~ other's  
28 imminent use of unlawful force. However, a ~~the~~ person is  
29 justified in the use of deadly force and does not have a duty  
30 to retreat ~~only~~ if:

31 (a) he or she reasonably believes that such force is

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1 necessary to prevent imminent death or great bodily harm to  
2 himself or herself or another or to prevent the imminent  
3 commission of a forcible felony; or-

4 (b) under those circumstances permitted pursuant to s.  
5 776.013.

6 Section 3. Section 776.031, Florida Statutes, is  
7 amended to read:

8 776.031 Use of force in defense of others.--A person  
9 is justified in the use of force, except deadly force, against  
10 another when and to the extent that the person reasonably  
11 believes that such conduct is necessary to prevent or  
12 terminate ~~the such~~ other's trespass on, or other tortious or  
13 criminal interference with, either real property other than a  
14 dwelling or personal property, lawfully in his or her  
15 possession or in the possession of another who is a member of  
16 his or her immediate family or household or of a person whose  
17 property he or she has a legal duty to protect. However, the  
18 person is justified in the use of deadly force only if he or  
19 she reasonably believes that such force is necessary to  
20 prevent the imminent commission of a forcible felony. A person  
21 does not have a duty to retreat if the person is in a place  
22 where he or she has a right to be.

23 Section 4. Section 776.032, Florida Statutes, is  
24 created to read:

25 776.032 Immunity from criminal prosecution and civil  
26 action for justifiable use of force.--

27 (1) A person who uses force as described in s.  
28 776.012, s. 776.013, or s. 776.031 is justified in using such  
29 force and is immune from criminal prosecution and civil action  
30 for the use of such force, unless the person against whom  
31 force was used is a law enforcement officer, as defined in s.

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1 943.10, who was acting in the performance of his or her  
 2 official duties and the officer identified himself or herself  
 3 in accordance with any applicable law or the person using  
 4 force knew or reasonably should have known that the person was  
 5 a law enforcement officer. As used in this subsection, the  
 6 term "criminal prosecution" includes arresting, detaining in  
 7 custody, and charging or prosecuting the defendant.

8 (2) A law enforcement agency may use standard  
 9 procedures for investigating the use of force as described in  
 10 subsection (1), but the agency may not arrest the person for  
 11 using force unless it determines that there is probable cause  
 12 that the force that was used was unlawful.

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

18 Section 5. This act shall take effect October 1, 2005.

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 1, line 2, through  
 24 page 2, line 4, delete those lines

26 and insert:

27 An act relating to the protection of persons  
 28 and property; creating s. 776.013, F.S. ;  
 29 authorizing a person to use force, including  
 30 deadly force, against an intruder or attacker  
 31 in a dwelling, residence, or vehicle under

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1 specified circumstances; creating a presumption  
2 that a reasonable fear of death or great bodily  
3 harm exists under certain circumstances;  
4 creating a presumption that a person acts with  
5 the intent to use force or violence under  
6 specified circumstances; providing definitions;  
7 amending ss. 776.012 and 776.031, F.S.;  
8 providing that a person is justified in using  
9 deadly force under certain circumstances;  
10 declaring that a person has no duty to retreat  
11 and has the right to stand his or her ground  
12 and meet force with force if the person is in a  
13 place where he or she has a right to be and the  
14 force is necessary to prevent death, great  
15 bodily harm, or the commission of a forcible  
16 felony; creating s. 776.032, F.S.; providing  
17 immunity from criminal prosecution or civil  
18 action for using deadly force; defining the  
19 term "criminal prosecution"; authorizing a law  
20 enforcement agency to investigate the use of  
21 deadly force but prohibiting the agency from  
22 arresting the person unless the agency  
23 determines that there is probable cause that  
24 the force the person used was unlawful;  
25 providing for the award of attorney's fees,  
26 court costs, compensation for loss of income,  
27 and other expenses to a defendant in a civil  
28 suit who was immune from prosecution under this  
29 section; providing an effective date.

31 WHEREAS, the Legislature finds that it is proper for

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1 law-abiding people to protect themselves, their families, and  
2 others from intruders and attackers without fear of  
3 prosecution or civil action for acting in defense of  
4 themselves and others, and

5           WHEREAS, the castle doctrine is a common-law doctrine  
6 of ancient origins which declares that a person's home is his  
7 or her castle, and

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

11           WHEREAS, the persons residing in or visiting this state  
12 have a right to expect to remain unmolested within their homes  
13 or vehicles, and

14           WHEREAS, no person or victim of crime should be  
15 required to surrender his or her personal safety to a  
16 criminal, nor should a person or victim be required to  
17 needlessly retreat in the face of intrusion or attack, NOW,  
18 THEREFORE,

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