

1 court costs, compensation for loss of income,
2 and other expenses to a defendant in a civil
3 suit who was immune from prosecution under this
4 section; providing an effective date.

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6 WHEREAS, the Legislature finds that it is proper for
7 law-abiding people to protect themselves, their families, and
8 others from intruders and attackers without fear of
9 prosecution or civil action for acting in defense of
10 themselves and others, and

11 WHEREAS, the castle doctrine is a common-law doctrine
12 of ancient origins which declares that a man's home is his
13 castle, and

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

17 WHEREAS, the persons residing in or visiting this state
18 have a right to expect to remain unmolested within their homes
19 or vehicles, and

20 WHEREAS, no person or victim of crime should be
21 required to surrender his or her personal safety to a
22 criminal, nor should a person or victim be required to
23 needlessly retreat in the face of intrusion or attack, NOW,
24 THEREFORE,

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26 Be It Enacted by the Legislature of the State of Florida:

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

30 776.013 Home protection; use of deadly force;
31 presumption of fear of death or bodily injury.--

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

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

10 (b) The person who uses defensive force knew or had
11 reason to believe that an unlawful or forcible entry or
12 unlawful or forcible act had occurred.

13 (2) The presumption set forth in subsection (1) is
14 inapplicable if:

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

19 (b) The person or persons sought to be removed is a
20 child or grandchild, or is otherwise in the lawful custody or
21 under the lawful guardianship of, the person against whom the
22 defensive force is used; or

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

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

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

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

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

11 (b) "Residence" means a dwelling in which a person
12 resides either temporarily or permanently or is visiting as an
13 invited guest.

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

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18 The presumption provided for in this section does not apply in
19 circumstances in which a law enforcement officer, as defined
20 in s. 943.10, enters or attempts to enter a dwelling,
21 residence, or vehicle in the performance of his or her
22 official duties and the officer has identified himself or
23 herself in accordance with any applicable law or the person
24 using force knew or reasonably should have known that the
25 person entering or attempting to enter was a law enforcement
26 officer.

27 Section 2. Section 776.012, Florida Statutes, is
28 amended to read:

29 776.012 Use of force in defense of person.--A person
30 is justified in using the use of force that is intended or
31 likely to cause death or bodily injury, except deadly force,

1 against another when and to the extent that the person
2 reasonably believes that such conduct is necessary to defend
3 himself or herself or another against ~~the such~~ other's
4 imminent use of unlawful force. However, the person is
5 justified in the use of deadly force only if he or she
6 reasonably believes that such force is necessary to prevent
7 imminent death or great bodily harm to himself or herself or
8 another or to prevent the imminent commission of a forcible
9 felony. A person does not have a duty to retreat under the
10 circumstances described in s. 776.013.

11 Section 3. Section 776.031, Florida Statutes, is
12 amended to read:

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

28 Section 4. Section 776.032, Florida Statutes, is
29 created to read:

30 776.032 Immunity from criminal prosecution and civil
31 action for justifiable use of force.--

1 (1) A person who uses force as described in s.
2 776.012, s. 776.013, or s. 776.031 is justified in using such
3 force and is immune from criminal prosecution and civil action
4 for the use of such force, unless the person against whom
5 force was used is a law enforcement officer, as defined in s.
6 943.10, who was acting in the performance of his or her
7 official duties and the officer identified himself or herself
8 in accordance with any applicable law or the person using
9 force knew or reasonably should have known that the person was
10 a law enforcement officer. As used in this subsection, the
11 term "criminal prosecution" includes wrongfully arresting,
12 detaining in custody, and charging or prosecuting the
13 defendant.

14 (2) A law enforcement agency may use standard
15 procedures for investigating the use of force as described in
16 subsection (1), but the agency may not arrest the person for
17 using force unless it determines that there is probable cause
18 that the force that was used was unlawful.

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

24 Section 5. This act shall take effect October 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 436

- The CS re-instates language stricken in the original bill that eliminated the justifiable use of force defense by the initial aggressor in certain circumstances.
- The CS eliminates the potential financial liability the original bill imposed upon law enforcement and state attorneys in cases where a person is arrested or prosecuted for use of force that is later found to be justifiable.
- The CS creates certain exceptions where the immunity from prosecution for justifiable use of force does not apply.