

By the Committees on Judiciary; Criminal Justice; and Senators Peadar, Argenziano, Clary, Wise, Lawson, Crist, Baker, Bennett, Posey, Villalobos, Garcia, Fasano, Webster, Lynn, Haridopolos, King, Dockery, Diaz de la Portilla, Bullard, (Additional Sponsors on Last Printed Page)

590-1645-05

1 A bill to be entitled
2 An act relating to the protection of persons
3 and property; creating s. 776.013, F.S.;
4 authorizing a person to use force, including
5 deadly force, against an intruder or attacker
6 in a dwelling, residence, or vehicle under
7 specified circumstances; creating a presumption
8 that a reasonable fear of death or great bodily
9 harm exists under certain circumstances;
10 creating a presumption that a person acts with
11 the intent to use force or violence under
12 specified circumstances; providing definitions;
13 amending ss. 776.012 and 776.031, F.S.;
14 providing that a person is justified in using
15 deadly force under certain circumstances;
16 declaring that a person has no duty to retreat
17 and has the right to stand his or her ground
18 and meet force with force if the person is in a
19 place where he or she has a right to be and the
20 force is necessary to prevent death, great
21 bodily harm, or the commission of a forcible
22 felony; creating s. 776.032, F.S.; providing
23 immunity from criminal prosecution or civil
24 action for using deadly force; defining the
25 term "criminal prosecution"; authorizing a law
26 enforcement agency to investigate the use of
27 deadly force but prohibiting the agency from
28 arresting the person unless the agency
29 determines that there is probable cause that
30 the force the person used was unlawful;
31 providing for the award of attorney's fees,

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 person's home is his
13 or her 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 great bodily harm.--

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

6 (a) The person against whom the defensive force was
7 used was in the process of unlawfully and forcefully entering,
8 or had unlawfully and forcibly entered, a dwelling, residence,
9 or occupied vehicle, or if that person had removed or was
10 attempting to remove another against that person's will from
11 the dwelling, residence, or occupied vehicle; and

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

15 (2) The presumption set forth in subsection (1) does
16 not apply if:

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

23 (b) The person or persons sought to be removed is a
24 child or grandchild, or is otherwise in the lawful custody or
25 under the lawful guardianship of, the person against whom the
26 defensive force is used; or

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

30 (d) The person against whom the defensive force is
31 used is a law enforcement officer, as defined in s.

1 943.10(14), who enters or attempts to enter a dwelling,
2 residence, or vehicle in the performance of his or her
3 official duties and the officer identified himself or herself
4 in accordance with any applicable law or the person using
5 force knew or reasonably should have known that the person
6 entering or attempting to enter was a law enforcement officer.

7 (3) A person who is attacked in any other place where
8 he or she has a right to be has no duty to retreat and has the
9 right to stand his or her ground and meet force with force,
10 including deadly force if he or she reasonably believes it is
11 necessary to do so to prevent death or great bodily harm to
12 himself or herself or another or to prevent the commission of
13 a forcible felony.

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

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

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

24 (b) "Residence" means a dwelling in which a person
25 resides either temporarily or permanently or is visiting as an
26 invited guest.

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

30 Section 2. Section 776.012, Florida Statutes, is
31 amended to read:

1 776.012 Use of force in defense of person.--A person
2 is justified in using ~~the use of~~ force, except deadly force,
3 against another when and to the extent that the person
4 reasonably believes that such conduct is necessary to defend
5 himself or herself or another against ~~the such~~ other's
6 imminent use of unlawful force. However, ~~a the~~ person is
7 justified in the use of deadly force and does not have a duty
8 to retreat only if:

9 (a) He or she reasonably believes that such force is
10 necessary to prevent imminent death or great bodily harm to
11 himself or herself or another or to prevent the imminent
12 commission of a forcible felony; or-

13 (b) Under those circumstances permitted pursuant to s.
14 776.013.

15 Section 3. Section 776.031, Florida Statutes, is
16 amended to read:

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

1 Section 4. Section 776.032, Florida Statutes, is
2 created to read:

3 776.032 Immunity from criminal prosecution and civil
4 action for justifiable use of force.--

5 (1) A person who uses force as described in s.
6 776.012, s. 776.013, or s. 776.031 is justified in using such
7 force and is immune from criminal prosecution and civil action
8 for the use of such force, unless the person against whom
9 force was used is a law enforcement officer, as defined in s.
10 943.10(14), who was acting in the performance of his or her
11 official duties and the officer identified himself or herself
12 in accordance with any applicable law or the person using
13 force knew or reasonably should have known that the person was
14 a law enforcement officer. As used in this subsection, the
15 term "criminal prosecution" includes arresting, detaining in
16 custody, and charging or prosecuting the defendant.

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

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

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

This committee substitute makes the following changes to the underlying committee substitute:

- Replaces the phrase "bodily injury" with "great bodily harm" for consistency with existing law that establishes a standard for the justifiable use of deadly force.
- Permits the use of deadly force against a person who is in the process of unlawfully and forcibly entering a dwelling, residence, or occupied vehicle.
- Clarifies that a person under a written pretrial supervision order of no contact may not have a right to enter a particular dwelling, residence, or occupied vehicle.
- Makes organizational and technical changes that do not alter the substance of the underlying committee substitute.

ADDITIONAL SPONSORS

Campbell, Jones, Sebesta, Pruitt, Constantine, Smith,
Alexander, Saunders and Aronberg