

By Senator Smith

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1 A bill to be entitled
2 An act relating to self-defense; amending ss. 30.60
3 and 166.0485, F.S.; requiring the county sheriff or
4 municipal police to issue reasonable guidelines for
5 the operation of a neighborhood crime watch program;
6 requiring the guidelines to include certain specified
7 conditions; amending s. 776.031, F.S.; authorizing a
8 person to use force, except deadly force in the
9 defense of property; authorizing a person to use
10 deadly force in the defense of property to prevent the
11 imminent commission of a forcible felony; amending s.
12 776.032, F.S.; providing that a person who uses force
13 is immune from civil action brought by the person or
14 persons against whom the force is used; revising the
15 definition of the term "criminal prosecution" with
16 regard to immunity from criminal prosecution and civil
17 action; providing that a law enforcement agency's
18 right and duty to fully investigate the use of force
19 upon which the claim of immunity is based is not
20 restricted; deleting a provision that prohibits a law
21 enforcement agency from arresting a person for using
22 force unless probable cause is found that the force
23 used was unlawful; authorizing, rather than requiring,
24 the court to award attorney fees, court costs, and
25 other expenses to a defendant who used force under
26 certain circumstances; providing that the court may
27 apply comparative fault to award damages, attorney
28 fees, court costs, and expenses to the prevailing
29 party in certain circumstances; amending s. 776.041,

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30 F.S.; revising the circumstances under which the
31 defense of justifiable use of force is unavailable to
32 an aggressor; establishing a burden of proof for an
33 aggressor who uses deadly force and specifying the
34 criteria that must be met in satisfying that burden;
35 creating s. 776.09, F.S.; providing legislative
36 findings; directing the Department of Law Enforcement
37 to collect, process, maintain, and disseminate
38 information and data on all incidents concerning the
39 alleged justifiable use of force in this state;
40 requiring the department to annually report to the
41 Legislature the information and data in a format and
42 manner determined by the Legislature; requiring each
43 law enforcement agency within the state to report
44 monthly to the department all incidents and cases in
45 which a claim regarding the justifiable use of force
46 is raised; providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 30.60, Florida Statutes, is amended to
51 read:

52 30.60 Establishment of neighborhood crime watch programs.—

53 (1) A county sheriff or municipal police department may
54 establish neighborhood crime watch programs within the county or
55 municipality. The participants of a neighborhood crime watch
56 program shall include, but need not be limited to, residents of
57 the county or municipality and owners of businesses located
58 within the county or municipality.

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59 (2) The county sheriff or municipal police department shall
60 issue reasonable guidelines for the operation of such programs.
61 The guidelines must include, but need not be limited to,
62 prohibiting a neighborhood crime watch patrol participant who is
63 on patrol from confronting or attempting to apprehend a person
64 suspected of improper or unlawful activity except in those
65 circumstances in which a reasonable person would be permitted,
66 authorized, or expected to assist another person.

67 Section 2. Section 166.0485, Florida Statutes, is amended
68 to read:

69 166.0485 Establishment of neighborhood crime watch
70 programs.—

71 (1) A county sheriff or municipal police department may
72 establish neighborhood crime watch programs within the county or
73 municipality. The participants of a neighborhood crime watch
74 program shall include, but need not be limited to, residents of
75 the county or municipality and owners of businesses located
76 within the county or municipality.

77 (2) The county sheriff or municipal police department shall
78 issue reasonable guidelines for the operation of such programs.
79 The guidelines must include, but need not be limited to,
80 prohibiting a neighborhood crime watch patrol participant who is
81 on patrol from confronting or attempting to apprehend a person
82 suspected of improper or unlawful activity except in those
83 circumstances in which a reasonable person would be permitted,
84 authorized, or expected to assist another person.

85 Section 3. Section 776.031, Florida Statutes, is amended to
86 read:

87 776.031 Use of force in defense of property ~~others;~~

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88 prevention of forcible felony.—A person is justified in the use
89 of force, except deadly force, against another when and to the
90 extent that the person reasonably believes that such conduct is
91 necessary to prevent or terminate the other's trespass on, or
92 other tortious or criminal interference with, either real
93 property other than a dwelling or personal property, lawfully in
94 his or her possession or in the possession of another who is a
95 member of his or her immediate family or household or of a
96 person whose property he or she has a legal duty to protect.
97 However, the person is justified in the use of deadly force only
98 if he or she reasonably believes that such force is necessary to
99 prevent the imminent commission of a forcible felony. A person
100 does not have a duty to retreat if the person is in a place
101 where he or she has a right to be.

102 Section 4. Section 776.032, Florida Statutes, is amended to
103 read:

104 776.032 Immunity from criminal prosecution and civil action
105 for justifiable use of force.—

106 (1) A person who uses force as permitted in s. 776.012, s.
107 776.013, or s. 776.031 is justified in using such force and is
108 immune from criminal prosecution and civil action by the person,
109 personal representative, or heirs of the person, against whom
110 force was used for the use of such force, unless the person
111 against whom force was used is a law enforcement officer, as
112 defined in s. 943.10(14), who was acting in the performance of
113 his or her official duties and the officer identified himself or
114 herself in accordance with any applicable law or the person
115 using force knew or reasonably should have known that the person
116 was a law enforcement officer. As used in this subsection, the

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117 term "criminal prosecution" means ~~includes arresting, detaining~~
118 ~~in custody, and charging or prosecuting the defendant.~~ This
119 subsection does not restrict a law enforcement agency's right
120 and duty to fully and completely investigate the use of force
121 upon which an immunity may be claimed or any event surrounding
122 such use of force.

123 (2) A law enforcement agency shall ~~may~~ use standard
124 procedures for investigating the use of force as described in
125 subsection (1), ~~but the agency may not arrest the person for~~
126 ~~using force unless it determines that there is probable cause~~
127 ~~that the force that was used was unlawful.~~

128 (3) The court may ~~shall~~ award reasonable attorney
129 attorney's fees, court costs, compensation for loss of income,
130 and all expenses incurred by the defendant in defense of any
131 civil action brought by a plaintiff if the court finds that the
132 defendant is immune from prosecution as provided in subsection
133 (1). If the defendant is not immune from prosecution or civil
134 action, the court may apply comparative fault to award damages,
135 attorney fees, court costs, and expenses to the prevailing
136 party.

137 Section 5. Section 776.041, Florida Statutes, is amended to
138 read:

139 776.041 Use of force by aggressor.—The justification
140 described in the preceding sections of this chapter, including,
141 but not limited to, the immunity established under s. 776.032,
142 is not available to a person who:

143 (1) (a) Is attempting to commit, is committing, or is
144 escaping after the commission of, a forcible felony; ~~or~~

145 (b) ~~(2)~~ Initially provokes the use of force against himself

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146 or herself; ~~unless:~~

147 ~~(a) Such force is so great that the person reasonably~~
148 ~~believes that he or she is in imminent danger of death or great~~
149 ~~bodily harm and that he or she has exhausted every reasonable~~
150 ~~means to escape such danger other than the use of force which is~~
151 ~~likely to cause death or great bodily harm to the assailant; or~~

152 ~~(b) In good faith, the person withdraws from physical~~
153 ~~contact with the assailant and indicates clearly to the~~
154 ~~assailant that he or she desires to withdraw and terminate the~~
155 ~~use of force, but the assailant continues or resumes the use of~~
156 ~~force.~~

157 (c) Leaves a place of safety to place himself or herself in
158 proximity to a situation likely to result in a use of force; or

159 (d) Pursues an alleged trespasser or assailant after the
160 alleged trespasser or assailant has withdrawn or when the
161 incident that gave rise to a previous confrontation has ended.

162 (2) An aggressor who uses deadly force bears the burden of
163 proof to establish that:

164 (a) He or she used every reasonable means within his or her
165 power and consistent with his or her own safety to avoid the
166 danger before resorting to the use of force;

167 (b) The use of force was reasonably necessary to avoid
168 death or great bodily harm to himself or herself; and

169 (c) He or she took steps to avoid the necessity of taking a
170 human life.

171 (3) For purposes of this section, the force used must be
172 reasonable, considering all of the circumstances, and the
173 permitted use of force implies no license for the initiation of
174 a confrontation or an unreasonable escalation of a confrontation

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175 in progress.

176 (4) In a civil action involving an aggressor, the court may
177 apply comparative fault in awarding damages to the prevailing
178 party.

179 Section 6. Section 776.09, Florida Statutes, is created to
180 read:

181 776.09 Statewide system for reporting, tracking, and
182 disseminating information regarding self-defense claims and
183 claim resolution.-

184 (1) The Legislature finds that transparency regarding the
185 outcomes of investigations into claims regarding the justifiable
186 use of force is vital to the integrity of this state's law
187 enforcement function and to the public's understanding of
188 incidents and cases involving any alleged justifiable use of
189 force. Therefore, it is in the best interest of the residents of
190 this state to establish a statewide database to track all
191 justifiable use of force claims made in this state, including
192 decisions on whether to arrest or prosecute persons who claim to
193 have justifiably used force as permitted in this chapter and the
194 reasons for the decisions.

195 (2) The Department of Law Enforcement shall collect,
196 process, maintain, and disseminate information and data on all
197 incidents in this state in which justifiable use of force is
198 alleged. The department shall annually report to the Legislature
199 the information and data in a format and manner determined by
200 the Legislature.

201 (3) Each law enforcement agency within the state shall
202 report monthly to the department all incidents and cases in
203 which a claim regarding the justifiable use of force is raised,

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204 from the time an initial claim is raised through the full
205 resolution of the claim or case.

206 Section 7. This act shall take effect July 1, 2014.