

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Mercado offered the following:

Amendment (with title amendment)

Between lines 425 and 426, insert:

Section 6. Section 776.032, Florida Statutes, is amended to read:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against

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14 | whom the force was used or threatened, unless the person against
15 | whom force was used or threatened is a law enforcement officer,
16 | as defined in s. 943.10(14), who was acting in the performance
17 | of his or her official duties and the officer identified himself
18 | or herself in accordance with any applicable law or the person
19 | using or threatening to use force knew or reasonably should have
20 | known that the person was a law enforcement officer. As used in
21 | this subsection, the term "criminal prosecution" means ~~includes~~
22 | ~~arresting, detaining in custody, and charging or prosecuting the~~
23 | defendant.

24 | (2) A law enforcement agency shall ~~may~~ use standard
25 | procedures for investigating the use or threatened use of force
26 | as described in subsection (1), ~~but the agency may not arrest~~
27 | ~~the person for using or threatening to use force unless it~~
28 | ~~determines that there is probable cause that the force that was~~
29 | ~~used or threatened was unlawful.~~

30 | (3) The court may ~~shall~~ award reasonable attorney
31 | ~~attorney's~~ fees, court costs, compensation for loss of income,
32 | and all expenses incurred by the defendant in defense of any
33 | civil action brought by a plaintiff if the court finds that the
34 | defendant is immune from prosecution as provided in subsection
35 | (1).

36 | (4) In a criminal prosecution, once a prima facie claim of
37 | self-defense immunity from criminal prosecution has been raised
38 | by the defendant at a pretrial immunity hearing, the burden of

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39 proof by clear and convincing evidence is on the party seeking
40 to overcome the immunity from criminal prosecution provided in
41 subsection (1).

42 Section 7. Section 776.041, Florida Statutes, is amended
43 to read:

44 776.041 Use or threatened use of force by aggressor.—The
45 justification described in the preceding sections of this
46 chapter is not available to a person who:

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

49 (2) Initially provokes the use or threatened use of force
50 against himself or herself; ~~unless:~~

51 ~~(a) Such force or threat of force is so great that the~~
52 ~~person reasonably believes that he or she is in imminent danger~~
53 ~~of death or great bodily harm and that he or she has exhausted~~
54 ~~every reasonable means to escape such danger other than the use~~
55 ~~or threatened use of force which is likely to cause death or~~
56 ~~great bodily harm to the assailant; or~~

57 ~~(b) In good faith, the person withdraws from physical~~
58 ~~contact with the assailant and indicates clearly to the~~
59 ~~assailant that he or she desires to withdraw and terminate the~~
60 ~~use or threatened use of force, but the assailant continues or~~
61 ~~resumes the use or threatened use of force.~~

62 (3) Leaves a place of safety to place himself or herself
63 in proximity to a situation likely to result in a use of force;

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64 or

65 (4) Pursues an alleged trespasser or assailant after the
66 alleged trespasser or assailant has withdrawn or when the
67 incident that gave rise to a previous confrontation has ended.

68 Section 8. Section 776.09, Florida Statutes, is created to
69 read:

70 776.09 Statewide system for reporting, tracking, and
71 disseminating information regarding self-defense claims and
72 claim resolutions.-

73 (1) The Legislature finds that transparency regarding the
74 outcomes of investigations into claims regarding the justifiable
75 use of force is vital to the integrity of this state's law
76 enforcement function and to the public's understanding of
77 incidents and cases involving any alleged justifiable use of
78 force. Therefore, it is in the best interests of the residents
79 of this state to establish a statewide database to track all
80 justifiable use of force claims made in this state, including
81 decisions on whether to arrest or prosecute persons who claimed
82 to have justifiably used force as permitted in this chapter and
83 the reasons for the decisions.

84 (2) The Department of Law Enforcement shall collect,
85 process, maintain, and disseminate information and data on all
86 incidents concerning the alleged justifiable use of force in
87 this state. The department shall annually report to the
88 Legislature the information and data in a format and manner

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89 determined by the Legislature.

90 (3) Each law enforcement agency within the state shall
91 monthly report to the department all incidents and cases in
92 which a claim regarding the justifiable use of force is raised,
93 from the time an initial claim is raised through the full
94 resolution of the claim or case.

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

Remove line 29 and insert:
appropriations; amending s. 776.031, F.S.; authorizing
a person to use force, except deadly force, in the
defense of property; authorizing a person to use
deadly force, in the defense of property, to prevent
the imminent commission of a forcible felony;
providing that a person does not have a duty to
retreat if the person is in a certain place; amending
s. 776.032, F.S.; revising the definition of the term
"criminal prosecution"; requiring, rather than
authorizing, a law enforcement agency to investigate
the use of force under certain circumstances; deleting
the provision that prohibits a law enforcement agency
from arresting a person for using force under certain
circumstances; authorizing, rather than requiring, the

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114 court to award attorney fees, court costs, and other
115 expenses to a defendant who used force under certain
116 circumstances; amending s. 776.041, F.S.; deleting the
117 provisions that make justifiable use of force
118 available to an aggressor who initially provokes the
119 use of force against himself or herself; providing
120 additional circumstances in which justifiable use of
121 force is not available; creating s. 776.09, F.S.;
122 providing legislative findings; directing the
123 Department of Law Enforcement to collect, process,
124 maintain, and disseminate information and data on all
125 incidents concerning the alleged justifiable use of
126 force in this state; requiring the department to
127 annually report to the Legislature the information and
128 data in a format and manner determined by the
129 Legislature; requiring each law enforcement agency
130 within the state to monthly report to the department
131 all incidents and cases in which a claim regarding the
132 justifiable use of force is raised; amending s.
133 790.065, F.S.; prohibiting

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