

By Senator Smith

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1                                   A bill to be entitled  
2       An act relating to self-defense; amending s. 776.031,  
3       F.S.; authorizing a person to use force, except deadly  
4       force, in the defense of property; authorizing a  
5       person to use deadly force, in the defense of  
6       property, to prevent the imminent commission of a  
7       forcible felony; providing that a person does not have  
8       a duty to retreat if the person is in a certain place;  
9       amending s. 776.032, F.S.; revising the definition of  
10      the term "criminal prosecution"; requiring, rather  
11      than authorizing, a law enforcement agency to  
12      investigate the use of force under certain  
13      circumstances; deleting the provision that prohibits a  
14      law enforcement agency from arresting a person for  
15      using force under certain circumstances; authorizing,  
16      rather than requiring, the court to award attorney  
17      fees, court costs, and other expenses to a defendant  
18      who used force under certain circumstances; amending  
19      s. 776.041, F.S.; deleting the provisions that make  
20      justifiable use of force available to an aggressor who  
21      initially provokes the use of force against himself or  
22      herself; providing additional circumstances in which  
23      justifiable use of force is not available; creating s.  
24      776.09, F.S.; providing legislative findings;  
25      directing the Department of Law Enforcement to  
26      collect, process, maintain, and disseminate  
27      information and data on all incidents concerning the  
28      alleged justifiable use of force in this state;  
29      requiring the department to annually report to the

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30 Legislature the information and data in a format and  
31 manner determined by the Legislature; requiring each  
32 law enforcement agency within the state to monthly  
33 report to the department all incidents and cases in  
34 which a claim regarding the justifiable use of force  
35 is raised; providing an effective date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Section 776.031, Florida Statutes, is amended to  
40 read:

41 776.031 Use of force in defense of property ~~others~~.—A  
42 person is justified in the use of force, except deadly force,  
43 against another when and to the extent that the person  
44 reasonably believes that such conduct is necessary to prevent or  
45 terminate the other's trespass on, or other tortious or criminal  
46 interference with, either real property other than a dwelling or  
47 personal property, lawfully in his or her possession or in the  
48 possession of another who is a member of his or her immediate  
49 family or household or of a person whose property he or she has  
50 a legal duty to protect. However, the person is justified in the  
51 use of deadly force only if he or she reasonably believes that  
52 such force is necessary to prevent the imminent commission of a  
53 forcible felony. A person does not have a duty to retreat if the  
54 person is in a place where he or she has a right to be.

55 Section 2. Section 776.032, Florida Statutes, is amended to  
56 read:

57 776.032 Immunity from criminal prosecution and civil action  
58 for justifiable use of force.—

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59 (1) A person who uses force as permitted in s. 776.012, s.  
60 776.013, or s. 776.031 is justified in using such force and is  
61 immune from criminal prosecution and civil action for the use of  
62 such force, unless the person against whom force was used is a  
63 law enforcement officer, as defined in s. 943.10(14), who was  
64 acting in the performance of his or her official duties and the  
65 officer identified himself or herself in accordance with any  
66 applicable law or the person using force knew or reasonably  
67 should have known that the person was a law enforcement officer.  
68 As used in this subsection, the term "criminal prosecution"  
69 ~~includes arresting, detaining in custody, and~~ means charging or  
70 prosecuting the defendant.

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

76 (3) The court may ~~shall~~ award reasonable attorney  
77 ~~attorney's~~ fees, court costs, compensation for loss of income,  
78 and all expenses incurred by the defendant in defense of any  
79 civil action brought by a plaintiff if the court finds that the  
80 defendant is immune from prosecution as provided in subsection  
81 (1).

82 Section 3. Section 776.041, Florida Statutes, is amended to  
83 read:

84 776.041 Use of force by aggressor.—The justification  
85 described in the preceding sections of this chapter is not  
86 available to a person who:

87 (1) Is attempting to commit, is committing, or is escaping

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88 after the commission of, a forcible felony; ~~or~~

89 (2) Initially provokes the use of force against himself or  
90 herself; ~~unless:~~

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

96 ~~(b) In good faith, the person withdraws from physical~~  
97 ~~contact with the assailant and indicates clearly to the~~  
98 ~~assailant that he or she desires to withdraw and terminate the~~  
99 ~~use of force, but the assailant continues or resumes the use of~~  
100 ~~force.~~

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

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

106 Section 4. Section 776.09, Florida Statutes, is created to  
107 read:

108 776.09 Statewide system for reporting, tracking, and  
109 disseminating information regarding self-defense claims and  
110 claim resolutions.—

111 (1) The Legislature finds that transparency regarding the  
112 outcomes of investigations into claims regarding the justifiable  
113 use of force is vital to the integrity of this state's law  
114 enforcement function and to the public's understanding of  
115 incidents and cases involving any alleged justifiable use of  
116 force. Therefore, it is in the best interests of the residents

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117 of this state to establish a statewide database to track all  
118 justifiable use of force claims made in this state, including  
119 decisions on whether to arrest or prosecute persons who claimed  
120 to have justifiably used force as permitted in this chapter and  
121 the reasons for the decisions.

122 (2) The Department of Law Enforcement shall collect,  
123 process, maintain, and disseminate information and data on all  
124 incidents concerning the alleged justifiable use of force in  
125 this state. The department shall annually report to the  
126 Legislature the information and data in a format and manner  
127 determined by the Legislature.

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

133 Section 5. This act shall take effect July 1, 2013.