

By Senator Evers

2-00388B-14

2014448__

1 A bill to be entitled
2 An act relating to the threatened use of force;
3 providing legislative findings and intent; amending s.
4 776.012, F.S.; applying provisions relating to the use
5 of force in defense of persons to the threatened use
6 of force; amending s. 776.013, F.S.; applying
7 presumption relating to the use of deadly force to the
8 threatened use of deadly force in the defense of a
9 residence and similar circumstances; applying
10 provisions relating to such use of force to the
11 threatened use of force; amending s. 776.031, F.S.;
12 applying provisions relating to the use of force in
13 defense of property to the threatened use of force;
14 amending s. 776.032, F.S.; applying immunity
15 provisions that relate to the use of force to the
16 threatened use of force; amending s. 776.041, F.S.;
17 applying provisions relating to the use of force by an
18 aggressor to the threatened use of force; providing
19 exceptions; amending s. 776.051, F.S.; providing that
20 a person is not justified in the threatened use of
21 force to resist an arrest by a law enforcement
22 officer; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. (1) The Legislature finds that persons have been
27 criminally prosecuted and have been sentenced to mandatory
28 minimum terms of imprisonment pursuant to s. 775.087, Florida
29 Statutes, for threatening to use force in a manner and under

2-00388B-14

2014448__

30 circumstances that would have been justifiable under chapter
31 776, Florida Statutes, had force actually been used.

32 (2) The Legislature intends to:

33 (a) Provide criminal and civil immunity to those who
34 threaten to use force if the threat was made in a manner and
35 under circumstances that would have been immune under chapter
36 776, Florida Statutes, had force actually been used.

37 (b) Clarify that those who threaten to use force may claim
38 self-defense if the threat was made in a manner and under
39 circumstances that would have been justifiable under chapter
40 776, Florida Statutes, had force actually been used.

41 (c) Ensure that those who threaten to use force in a manner
42 and under circumstances that are justifiable under chapter 776,
43 Florida Statutes, are not sentenced to a mandatory minimum term
44 of imprisonment pursuant to s. 775.087, Florida Statutes.

45 (d) Encourage those who have been sentenced to a mandatory
46 minimum term of imprisonment pursuant to s. 775.087, Florida
47 Statutes, for threatening to use force in a manner and under
48 circumstances that are justifiable under chapter 776, Florida
49 Statutes, to apply for executive clemency.

50 Section 2. Section 776.012, Florida Statutes, is amended to
51 read:

52 776.012 Use or threatened use of force in defense of
53 person.—A person is justified in using or threatening to use
54 force, except deadly force, against another when and to the
55 extent that the person reasonably believes that such conduct is
56 necessary to defend himself or herself or another against the
57 other's imminent use of unlawful force. However, a person is
58 justified in using or threatening to use ~~the use of~~ deadly force

2-00388B-14

2014448__

59 and does not have a duty to retreat if:

60 (1) He or she reasonably believes that using or threatening
61 to use such force is necessary to prevent imminent death or
62 great bodily harm to himself or herself or another or to prevent
63 the imminent commission of a forcible felony; or

64 (2) Under those circumstances permitted pursuant to s.
65 776.013.

66 Section 3. Subsections (1), (2), and (3) of section
67 776.013, Florida Statutes, are amended to read:

68 776.013 Home protection; use or threatened use of deadly
69 force; presumption of fear of death or great bodily harm.—

70 (1) A person is presumed to have held a reasonable fear of
71 imminent peril of death or great bodily harm to himself or
72 herself or another when using or threatening to use defensive
73 force that is intended or likely to cause death or great bodily
74 harm to another if:

75 (a) The person against whom the defensive force was used or
76 threatened was in the process of unlawfully and forcefully
77 entering, or had unlawfully and forcibly entered, a dwelling,
78 residence, or occupied vehicle, or if that person had removed or
79 was attempting to remove another against that person's will from
80 the dwelling, residence, or occupied vehicle; and

81 (b) The person who uses or threatens to use defensive force
82 knew or had reason to believe that an unlawful and forcible
83 entry or unlawful and forcible act was occurring or had
84 occurred.

85 (2) The presumption set forth in subsection (1) does not
86 apply if:

87 (a) The person against whom the defensive force is used or

2-00388B-14

2014448__

88 threatened has the right to be in or is a lawful resident of the
89 dwelling, residence, or vehicle, such as an owner, lessee, or
90 titleholder, and there is not an injunction for protection from
91 domestic violence or a written pretrial supervision order of no
92 contact against that person; or

93 (b) The person or persons sought to be removed is a child
94 or grandchild, or is otherwise in the lawful custody or under
95 the lawful guardianship of, the person against whom the
96 defensive force is used or threatened; or

97 (c) The person who uses or threatens to use defensive force
98 is engaged in an unlawful activity or is using the dwelling,
99 residence, or occupied vehicle to further an unlawful activity;
100 or

101 (d) The person against whom the defensive force is used or
102 threatened is a law enforcement officer, as defined in s.
103 943.10(14), who enters or attempts to enter a dwelling,
104 residence, or vehicle in the performance of his or her official
105 duties and the officer identified himself or herself in
106 accordance with any applicable law or the person using or
107 threatening to use force knew or reasonably should have known
108 that the person entering or attempting to enter was a law
109 enforcement officer.

110 (3) A person who is not engaged in an unlawful activity and
111 who is attacked in any other place where he or she has a right
112 to be has no duty to retreat and has the right to stand his or
113 her ground and use or threaten to use ~~meet force with force~~,
114 including deadly force if he or she reasonably believes it is
115 necessary to do so to prevent death or great bodily harm to
116 himself or herself or another or to prevent the commission of a

2-00388B-14

2014448__

117 forcible felony.

118 Section 4. Section 776.031, Florida Statutes, is amended to
119 read:

120 776.031 Use or threatened use of force in defense of
121 property ~~others~~.—A person is justified in using or threatening
122 to use ~~the use of~~ force, except deadly force, against another
123 when and to the extent that the person reasonably believes that
124 such conduct is necessary to prevent or terminate the other's
125 trespass on, or other tortious or criminal interference with,
126 either real property other than a dwelling or personal property,
127 lawfully in his or her possession or in the possession of
128 another who is a member of his or her immediate family or
129 household or of a person whose property he or she has a legal
130 duty to protect. However, a ~~the~~ person is justified in using or
131 threatening to use ~~the use of~~ deadly force only if he or she
132 reasonably believes that such conduct ~~force~~ is necessary to
133 prevent the imminent commission of a forcible felony. A person
134 does not have a duty to retreat if the person is in a place
135 where he or she has a right to be.

136 Section 5. Subsections (1) and (2) of section 776.032,
137 Florida Statutes, are amended to read:

138 776.032 Immunity from criminal prosecution and civil action
139 for justifiable use or threatened use of force.—

140 (1) A person who uses or threatens to use force as
141 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
142 in ~~using~~ such conduct ~~force~~ and is immune from criminal
143 prosecution and civil action for the use or threatened use of
144 such force, unless the person against whom force was used or
145 threatened is a law enforcement officer, as defined in s.

2-00388B-14

2014448__

146 943.10(14), who was acting in the performance of his or her
147 official duties and the officer identified himself or herself in
148 accordance with any applicable law or the person using or
149 threatening to use force knew or reasonably should have known
150 that the person was a law enforcement officer. As used in this
151 subsection, the term "criminal prosecution" includes arresting,
152 detaining in custody, and charging or prosecuting the defendant.

153 (2) A law enforcement agency may use standard procedures
154 for investigating the use or threatened use of force as
155 described in subsection (1), but the agency may not arrest the
156 person for using or threatening to use force unless it
157 determines that there is probable cause that the force that was
158 used or threatened was unlawful.

159 Section 6. Subsection (2) of section 776.041, Florida
160 Statutes, is amended to read:

161 776.041 Use or threatened use of force by aggressor.—The
162 justification described in the preceding sections of this
163 chapter is not available to a person who:

164 (2) Initially provokes the use or threatened use of force
165 against himself or herself, unless:

166 (a) Such force or threat of force is so great that the
167 person reasonably believes that he or she is in imminent danger
168 of death or great bodily harm and that he or she has exhausted
169 every reasonable means to escape such danger other than the use
170 or threatened use of force which is likely to cause death or
171 great bodily harm to the assailant; or

172 (b) In good faith, the person withdraws from physical
173 contact with the assailant and indicates clearly to the
174 assailant that he or she desires to withdraw and terminate the

2-00388B-14

2014448__

175 use or threatened use of force, but the assailant continues or
176 resumes the use or threatened use of force.

177 Section 7. Subsection (1) of section 776.051, Florida
178 Statutes, is amended to read:

179 776.051 Use or threatened use of force in resisting arrest
180 or making an arrest or in the execution of a legal duty;
181 prohibition.-

182 (1) A person is not justified in the use or threatened use
183 of force to resist an arrest by a law enforcement officer, or to
184 resist a law enforcement officer who is engaged in the execution
185 of a legal duty, if the law enforcement officer was acting in
186 good faith and he or she is known, or reasonably appears, to be
187 a law enforcement officer.

188 Section 8. This act shall take effect upon becoming a law.