## Florida Senate - 2005

By the Committee on Criminal Justice; and Senators Peaden, Argenziano, Clary, Wise, Lawson, Crist, Baker, Bennett, Posey, Villalobos, Garcia, Fasano, Webster, Lynn, Haridopolos, King, Dockery, Diaz de la Portilla, Bullard, Campbell, Jones, Sebesta, Pruitt and Constantine

591-1458-05

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
б	in a dwelling, residence, or vehicle under
7	specified circumstances; creating a presumption
8	that a reasonable fear of death or bodily
9	injury 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,

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1 court costs, compensation for loss of income, 2 and other expenses to a defendant in a civil suit who was immune from prosecution under this 3 4 section; providing an effective date. 5 6 WHEREAS, the Legislature finds that it is proper for 7 law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of 8 prosecution or civil action for acting in defense of 9 10 themselves and others, and WHEREAS, the castle doctrine is a common-law doctrine 11 12 of ancient origins which declares that a man's home is his 13 castle, and WHEREAS, Section 8 of Article I of the State 14 Constitution guarantees the right of the people to bear arms 15 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 or vehicles, and 19 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, THEREFORE, 2.4 25 Be It Enacted by the Legislature of the State of Florida: 26 27 2.8 Section 1. Section 776.013, Florida Statutes, is 29 created to read: 30 776.013 Home protection; use of deadly force; presumption of fear of death or bodily injury .--31

1	(1) A person is presumed to have held a reasonable
2	fear of imminent peril of death or bodily injury to himself or
3	herself or another when using defensive force that is intended
4	or likely to cause death or bodily injury to another if:
5	(a) The person against whom the defensive force was
б	used had unlawfully and forcibly entered a dwelling,
7	residence, or occupied vehicle, or if that person had removed
8	or attempted to remove another against that person's will from
9	the dwelling, residence, or occupied vehicle; and
10	(b) The person who uses defensive force knew or had
11	reason to believe that an unlawful or forcible entry or
12	unlawful or forcible act had occurred.
13	(2) The presumption set forth in subsection (1) is
14	inapplicable if:
15	(a) The person against whom the defensive force is
16	used is an owner, lessee, or titleholder of the dwelling,
17	residence, or vehicle and there is not an injunction for
18	protection from domestic violence against that person;
19	(b) The person or persons sought to be removed is a
20	child or grandchild, or is otherwise in the lawful custody or
21	under the lawful quardianship of, the person against whom the
22	<u>defensive force is used; or</u>
23	(c) The person who uses defensive force was engaged in
24	an unlawful activity or using the dwelling, residence, or
25	occupied vehicle to further an unlawful activity.
26	(3) A person who is attacked in any other place where
27	he or she has a right to be has no duty to retreat and has the
28	right to stand his or her ground and meet force with force,
29	including deadly force, if it is reasonably necessary to do so
30	to prevent death or great bodily harm to himself or herself or
31	another or to prevent the commission of a forcible felony.
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1	(4) A person who unlawfully and by force enters or
2	attempts to enter a person's dwelling, residence, or occupied
3	vehicle is presumed to be doing so with the intent to commit
4	an unlawful act involving force or violence.
5	(5) As used in this section, the term:
6	(a) "Dwelling" means a building or conveyance of any
7	kind, including any attached porch, whether the building or
8	conveyance is temporary or permanent, mobile or immobile,
9	which has a roof over it, including a tent, and is designed to
10	be occupied by people lodging therein at night.
11	(b) "Residence" means a dwelling in which a person
12	resides either temporarily or permanently or is visiting as an
13	invited quest.
14	(c) "Vehicle" means a conveyance of any kind, whether
15	or not motorized, which is designed to transport people or
16	property.
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18	The presumption provided for in this section does not apply in
19	circumstances in which a law enforcement officer, as defined
20	in s. 943.10, enters or attempts to enter a dwelling,
21	residence, or vehicle in the performance of his or her
22	official duties and the officer has identified himself or
23	herself in accordance with any applicable law or the person
24	using force knew or reasonably should have known that the
25	person entering or attempting to enter was a law enforcement
26	<u>officer.</u>
27	Section 2. Section 776.012, Florida Statutes, is
28	amended to read:
29	776.012 Use of force in defense of personA person
30	is justified in <u>using the use of</u> force <u>that is intended or</u>
31	likely to cause death or bodily injury, except deadly force,
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1 against another when and to the extent that the person 2 reasonably believes that such conduct is necessary to defend himself or herself or another against the such other's 3 imminent use of unlawful force. However, the person is 4 justified in the use of deadly force only if he or she 5 6 reasonably believes that such force is necessary to prevent 7 imminent death or great bodily harm to himself or herself or 8 another or to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat under the 9 circumstances described in s. 776.013. 10 Section 3. Section 776.031, Florida Statutes, is 11 12 amended to read: 13 776.031 Use of force in defense of others.--A person is justified in the use of force, except deadly force, against 14 another when and to the extent that the person reasonably 15 believes that such conduct is necessary to prevent or 16 17 terminate the such other's trespass on, or other tortious or 18 criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her 19 possession or in the possession of another who is a member of 20 21 his or her immediate family or household or of a person whose 22 property he or she has a legal duty to protect. However, the 23 person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to 2.4 prevent the imminent commission of a forcible felony. A person 25 26 does not have a duty to retreat if the person is in a place 27 where he or she has a right to be. 2.8 Section 4. Section 776.032, Florida Statutes, is 29 created to read: 30 776.032 Immunity from criminal prosecution and civil action for justifiable use of force .--31

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2775.012, s. 776.013, or s. 776.031 is justified in using such3force and is immune from criminal prosecution and civil action4for the use of such force, unless the person against whom5force was used is a law enforcement officer, as defined in s.6943.10, who was acting in the performance of his or her7official duties and the officer identified himself or herself8in accordance with any applicable law or the person using9force knew or reasonably should have known that the person was10a law enforcement officer. As used in this subsection, the11term "criminal prosecution" includes wrondfully arresting.12defendant.13defendant.14(2) A law enforcement agency may use standard15procedures for investigating the use of force as described in16subsection (1), but the agency may not arrest the person for19(3) The court shall award reasonable attorney's fees,10court costs, compensation for loss of income, and all expenses11incurred by the defendant in defense of any civil action12brought by a plaintiff if the court finds that the defendant13is immune from prosecution as provided in subsection (1).14Section 5. This act shall take effect October 1, 2005.15is immune from prosecution as provided in subsection (1).16action 5. This act shall take effect October 1, 2005.17action 5. This act shall take effect October 1, 2005.18action 5. This act shall take effect October 1,	1	(1) A person who uses force as described in s.
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**Florida Senate - 2005** 591-1458-05 CS for SB 436

1 2	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 436
⊿ 3	Sellace Bill 430
4	- The CS re-instates language striken in the original bill
5	that eliminated the justifiable use of force defense by the initial aggressor in certain circumstances.
б	- The CS eliminates the potential financial liability the
<pre>original bill imposed upon law enforcement and stat attorneys in cases where a person is arrested or</pre>	attorneys in cases where a person is arrested or
8	prosecuted for use of force that is later found to be justifiable.
9	- The CS creates certain exceptions where the immunity from prosecution for justifiable use of force does not apply.
10	prosecution for justifiable use of force does not appry.
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