

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.