

By Senator Braynon

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1 A bill to be entitled
2 An act relating to use or threatened use of force;
3 amending ss. 776.012 and 776.013, F.S.; revising the
4 standard under which a person is justified in using or
5 threatening to use nondeadly or deadly force from a
6 person's reasonable belief to the objective belief of
7 a reasonably cautious and prudent person in the same
8 circumstances; amending s. 776.032, F.S.; revising the
9 burden of proof from clear and convincing evidence to
10 a preponderance of the evidence which the party
11 seeking to overcome immunity from criminal prosecution
12 under a specified provision must prove; providing that
13 immunity from prosecution is not available to an
14 aggressor; reenacting s. 790.25(5), F.S., relating to
15 lawful ownership, possession, and use of firearms and
16 other weapons, to incorporate the amendment made to s.
17 776.012, F.S., in a reference thereto; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 776.012, Florida Statutes, is amended to
23 read:

24 776.012 Use or threatened use of force in defense of
25 person.—

26 (1) A person is justified in using or threatening to use
27 force, except deadly force, against another when and to the
28 extent that a reasonably cautious and prudent person in the same
29 circumstances would objectively believe ~~the person reasonably~~

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30 ~~believes~~ that such conduct is necessary to defend himself or
31 herself or another against the other's imminent use of unlawful
32 force. A person who uses or threatens to use force in accordance
33 with this subsection does not have a duty to retreat before
34 using or threatening to use such force.

35 (2) A person is justified in using or threatening to use
36 deadly force if a reasonably cautious and prudent person in the
37 same circumstances would objectively believe ~~he or she~~
38 ~~reasonably believes~~ that using or threatening to use such force
39 is necessary to prevent imminent death or great bodily harm to
40 himself or herself or another or to prevent the imminent
41 commission of a forcible felony. A person who uses or threatens
42 to use deadly force in accordance with this subsection does not
43 have a duty to retreat and has the right to stand his or her
44 ground if the person using or threatening to use the deadly
45 force is not engaged in a criminal activity and is in a place
46 where he or she has a right to be.

47 Section 2. Subsection (1) of section 776.013, Florida
48 Statutes, is amended to read:

49 776.013 Home protection; use or threatened use of deadly
50 force; presumption of fear of death or great bodily harm.—

51 (1) A person who is in a dwelling or residence in which the
52 person has a right to be has no duty to retreat and has the
53 right to stand his or her ground and use or threaten to use:

54 (a) Nondeadly force against another when and to the extent
55 that a reasonably cautious and prudent person in the same
56 circumstances would objectively believe ~~the person reasonably~~
57 ~~believes~~ that such conduct is necessary to defend himself or
58 herself or another against the other's imminent use of unlawful

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59 force; or

60 (b) Deadly force if a reasonably cautious and prudent
61 person in the same circumstances would objectively believe ~~he or~~
62 ~~she reasonably believes~~ that using or threatening to use such
63 force is necessary to prevent imminent death or great bodily
64 harm to himself or herself or another or to prevent the imminent
65 commission of a forcible felony.

66 Section 3. Subsection (4) of section 776.032, Florida
67 Statutes, is amended, subsection (1) of that section is
68 republished, and subsection (5) is added to that section, to
69 read:

70 776.032 Immunity from criminal prosecution and civil action
71 for justifiable use or threatened use of force.—

72 (1) A person who uses or threatens to use force as
73 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
74 in such conduct and is immune from criminal prosecution and
75 civil action for the use or threatened use of such force by the
76 person, personal representative, or heirs of the person against
77 whom the force was used or threatened, unless the person against
78 whom force was used or threatened is a law enforcement officer,
79 as defined in s. 943.10(14), who was acting in the performance
80 of his or her official duties and the officer identified himself
81 or herself in accordance with any applicable law or the person
82 using or threatening to use force knew or reasonably should have
83 known that the person was a law enforcement officer. As used in
84 this subsection, the term "criminal prosecution" includes
85 arresting, detaining in custody, and charging or prosecuting the
86 defendant.

87 (4) In a criminal prosecution, once a prima facie claim of

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88 self-defense immunity from criminal prosecution has been raised
89 by the defendant at a pretrial immunity hearing, the burden of
90 proof by a preponderance of the evidence ~~clear and convincing~~
91 ~~evidence~~ is on the party seeking to overcome the immunity from
92 criminal prosecution provided in subsection (1).

93 (5) Immunity from prosecution is not available to an
94 aggressor, as provided in s. 776.041.

95 Section 4. For the purpose of incorporating the amendment
96 made by this act to section 776.012, Florida Statutes, in a
97 reference thereto, subsection (5) of section 790.25, Florida
98 Statutes, is reenacted to read:

99 790.25 Lawful ownership, possession, and use of firearms
100 and other weapons.—

101 (5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding
102 subsection (2), it is lawful and is not a violation of s. 790.01
103 for a person 18 years of age or older to possess a concealed
104 firearm or other weapon for self-defense or other lawful purpose
105 within the interior of a private conveyance, without a license,
106 if the firearm or other weapon is securely encased or is
107 otherwise not readily accessible for immediate use. Nothing
108 herein contained prohibits the carrying of a legal firearm other
109 than a handgun anywhere in a private conveyance when such
110 firearm is being carried for a lawful use. Nothing herein
111 contained shall be construed to authorize the carrying of a
112 concealed firearm or other weapon on the person. This subsection
113 shall be liberally construed in favor of the lawful use,
114 ownership, and possession of firearms and other weapons,
115 including lawful self-defense as provided in s. 776.012.

116 Section 5. This act shall take effect July 1, 2019.