

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 677 Justifiable Use of Force
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall	White

SUMMARY ANALYSIS

Chapter 776, F.S., authorizes a person to justifiably use or threaten to use force in order to defend himself, herself, another, or property. In Florida, this right extends to a person, without requiring a duty to retreat, so long as the person is in a place where he or she has a right to be and is not engaged in criminal activity.

Chapter 776, F.S., codifies the right to justifiable use of force, non-deadly and deadly, as follows:

- Section 776.012, F.S., relating to the defense of person;
- Section 776.013, F.S., relating to home protection; and
- Section 776.031, F.S., relating to the defense of property.

In 2014, the Legislature amended s. 776.13(3), F.S., relating to the right to self-defense in a person's dwelling, residence, or vehicle. The statute currently states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force. The statute may potentially be interpreted to require a person to first be attacked before he or she is entitled to use force in self-defense. Such a requirement would be inconsistent with the remainder of ch. 776, F.S., which allows a person to use defensive force as soon as the person reasonably believes such force is necessary to *prevent* or terminate another person's use of unlawful force.

The bill revises s. 776.013(3), F.S., to strike the word "attacked" from the right to use self-defense in a person's dwelling, residence, or vehicle. This revision removes any ambiguity that the right to self-defense in a person's dwelling, residence, or vehicle may be interpreted to require anything more than is required throughout the remainder of ch. 776, F.S., and ensures that a person may use defensive force in his or her dwelling, residence, or vehicle to *prevent* another's unlawful use of force.

Additionally, the bill revises s. 776.013, F.S., relating to home protection, to reorganize certain subsections. This reorganization makes no substantive change to the law; instead, it more logically organizes the section.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force

Chapter 776, F.S., authorizes a person to use or threaten to use force in order to defend himself, herself, another, or property. In 2005, the Legislature enacted into law what is commonly referred to as the “Stand Your Ground” (SYG) law.¹ The law codified the common law’s “Castle Doctrine” which provides that a person, who is threatened with an intruder in his or her own home, has no duty to retreat and may defend himself or herself and his or her castle.² The 2005 SYG law extended this privilege to allow a person to use defensive force, without a duty to retreat, in any place that he or she had a right to be. Most recently in 2014, the Legislature amended ch. 776, F.S., to extend the justifiable use of force to also entitle a person to “threaten to use” force in the same manner in which they are justified in actually using force.³

Home Protection

Section 776.013(1), F.S., provides special privileges related to the justifiable use or threat of use of force for a person in his or her home. The law creates a presumption of reasonable fear or imminent peril of death or great bodily harm on behalf of the person using or threatening to use defensive deadly force if:

- The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had entered, a dwelling,⁴ residence,⁵ or occupied vehicle,⁶ or if that person had removed or was attempting to remove another against that’s person’s will from the dwelling, residence, or occupied vehicle; and
- The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

Section 776.013(4), F.S., provides that a person who unlawfully and by force enters or attempts to enter a person’s dwelling residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

However, the presumption is limited from applying in certain circumstances including when the person against whom the force is used or threatened to be used:

- Has a right to be in or is a lawful owner of the dwelling, residence, or occupied vehicle;⁷
- Is in lawful custody of a child or grandchild and sought to remove the child or grandchild from the dwelling, residence, or occupied vehicle;⁸ or
- Is a law enforcement officer who enters the dwelling, residence, or occupied vehicle in the performance of his or her duties.⁹

¹ ch. 2005-27, L.O.F.

² Steven Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine, Implications for Policy and Practice*, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, at 3, available at <http://www.ndaa.org/pdf/Castle%20Doctrine.pdf>.

³ ch. 2014-195, L.O.F.

⁴ “Dwelling” is defined to mean “a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.” s. 776.013(5)(a), F.S.

⁵ “Residence” is defined to mean “a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.” s. 776.013(5)(b), F.S.

⁶ “Vehicle” is defined to mean “a conveyance of any kind, whether or not motorized, which is designed to transport people or property.” s. 776.013(5)(c), F.S.

⁷ As long as the person does not have an injunction for protection from domestic violence or a no-contact order that him or her. s. 776.013(2)(a), F.S.

⁸ s. 776.013(2)(b), F.S.

⁹ s. 776.013(2)(c), F.S.

Additionally, the presumption does not apply when the person who uses or threatens to use force is engaged in criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity.

Currently, section 776.013(3), F.S., authorizes a person who is *attacked*¹⁰ in his or her dwelling, residence, or vehicle to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force either in accordance with:

- Sections 776.012(1) or (2), F.S. (defense of person); or
- Sections 776.031(1) or (2), F.S. (defense of property).

As s. 776.013(3), F.S., is currently drafted, it may be interpreted to require a person to first be *attacked* in his or her dwelling, residence, or vehicle before being entitled to lawfully use defensive force. Such a result is inconsistent with the remainder of ch. 776, F.S., which entitles a person to use defensive force if he or she reasonably believes such force is necessary to *prevent* or terminate another's use of unlawful force.

Additionally, the circumstances under which a person in his or her dwelling, residence, or vehicle is entitled to a presumption of reasonable fear appear in the law before the section codifying the right to use or threaten to use justifiable force. Therefore, the organization of s. 776.013, F.S., may be somewhat confusing.

Defense of Property

Section 776.031, F.S., authorizes the justifiable use of force in defense of property. A person is justified in using or threatening to use non-deadly force against another person, and has no duty to retreat, when the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious interference with, property that is either:

- Real property (other than a dwelling) or personal property; and
- Lawfully in his or her possession or the possession of another who is a member or his or her immediate family or household or of a person whose property he or she has a legal duty to protect.

Furthermore, a person is justified in using or threatening to use deadly force only if he or she reasonably believes such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in this manner does not have a duty to retreat and has a right to stand his or her ground if the person:

- Is not engaged in criminal activity; and
- Is in a place where he or she has a right to be.

Defense of Person

Section 776.012, F.S., authorizes the justifiable use of force in defense of person. The law authorizes a person to use or threaten to use non-deadly force against another when that person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in this manner does not have a duty to retreat before using or threatening to use such force.

Additionally, a person is justified in using or threatening to use deadly force if he or she reasonably believes such force is necessary to prevent:

- Imminent death or great bodily harm to himself or herself;
- Imminent death or great bodily harm to another; or
- The imminent commission of a forcible felony.¹¹

¹⁰ *Emphasis added.* This change resulted from the amendments to s. 776.013(3) made in 2014. ch. 2014-195, L.O.F.

¹¹ Crimes which are classified as a "forcible felony" include: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy;

A person using or threatening to use deadly force in this manner does not have a duty to retreat and has a right to stand his or her ground if the person:

- Is not engaged in criminal activity; and
- Is in a place where he or she has a right to be.

Effect of Bill

The bill amends s. 776.013, F.S., relating to home protection, to reorganize and provide clarity to the right to the use of justifiable force in a dwelling, residence, or vehicle. The bill amends s. 776.013(3), F.S., to repeal the word “attacked” from the subsection and remove any ambiguity or potential that the law could be interpreted to require a person to first be attacked before being entitled to lawful self-defense. As a result, the law will now authorize a person who is in his or her dwelling, residence, or vehicle, to stand his or her ground and use or threaten to use force, including deadly force, if she or she threatens to use force in accordance with:

- Section 776.012(1) or (2), F.S. (defense of person); or
- Section 776.031(1) or (2), F.S. (defense of property).

Persons using force in accordance with either of these provisions do not have a duty to retreat.

Additionally, the bill reorganizes the current subsections within s. 766.013, F.S., to move the subsection authorizing a person’s right to stand his or her ground, without requiring a duty to retreat, to appear before the subsections relating to the presumption of fear set forth in the statute. This reorganization makes no substantive change to the law; instead, it more logically organizes the section..

B. SECTION DIRECTORY:

Section 1: Amending s. 776.013, F.S., relating to home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.

Section 2: Providing an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.