

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1052

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Simmons

SUBJECT: Justifiable Use of Force

DATE: March 30, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1052 addresses an inconsistency in law caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person's dwelling, residence, or vehicle. The bill also minimizes the circumstances in which a person might be required to retreat within or from a dwelling, residence, or vehicle before using deadly force in self-defense.

The relevant part of s. 776.013(3), F.S., which is inconsistent with other statutes 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. As a result of the inconsistency, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force uniformly state—the right to use force or threaten to use force begins when a person "reasonably believes" that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

The bill revises s. 776.013(3), F.S., to delete the word "attacked," which makes the subsection more consistent with the other statutory provisions governing the right to use defensive force.

Existing s. 776.013(3), F.S., also includes cross-references to other statutes that restrict a defender from using deadly force outside of a dwelling, residence, or vehicle. The restrictions apply to a person who is engaged in criminal activity. As a result of the incorporated restrictions, a person in a dwelling, residence, or vehicle who is engaged in criminal activity might have a duty to flee from the dwelling, residence, or vehicle before he or she may lawfully use deadly

force in self-defense. The bill provides that the criminal activity that might trigger a defender's duty to flee from a dwelling, residence, or vehicle does not include nonviolent misdemeanors.

II. Present Situation:

Common Law Duty to Retreat

Before the Legislature enacted the "Stand Your Ground" law in 2005, a person's rights to use deadly force in self-defense were substantially defined by court-created common law. Under this common law, a person acting in self-defense outside his or her home or workplace had a "duty to use every reasonable means to avoid the danger, including retreat, prior to using deadly force."¹

Castle Doctrine Exception to the Duty to Retreat

The Castle Doctrine was a common law exception to the duty to retreat before using deadly force in self-defense. This doctrine predated the SYG law. Under the doctrine, when a person was in his or her "castle," the person had no duty to retreat before using deadly force against an intruder. And person's castle was limited to his or her home and workplace.² The castle doctrine has been explained by the courts as:

the proposition that a person's dwelling house is a castle of defense for himself and his family, and an assault on it with intent to injure him or any lawful inmate of it may justify the use of force as protection, and even deadly force if there exist reasonable and factual grounds to believe that unless so used, a felony would be committed.³

The essential policy behind the castle doctrine is that a person in his or her home or "castle" has satisfied his or her duty to retreat "to the wall."⁴ In *Weiland v. State*, the policy for the doctrine was explained as follows:

It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. More than 200 years ago it was said by Lord Chief Justice Hale: In case a man "is assailed in his own house, he need not flee as far as he can, as in other cases of se defendendo [self-defense], for he hath the protection of his house to excuse him from flying, as that would be to give up the protection of his house to his adversary by flight." *Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home The rule is the same whether the attack proceeds from some other occupant or from an intruder.*⁵

¹ *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003); see also *Weiland v. State*, 732 So. 2d 1044, 1049 (Fla. 1999)

² *James*, 867 So. 2d at 416-17.

³ *Weiland*, 732 So. 2d at note 5 (citing *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

⁴ *James*, 867 So. 2d at 416.

⁵ *Weiland*, 732 So. 2d at 1049-50 (emphasis original).

Stand Your Ground law

In 2005, the Legislature enacted into law chapter 2005-27, Laws of Fla., commonly known as the “Stand Your Ground” (SYG) law. The law expanded the common law Castle Doctrine and generally abrogated the common law duty to retreat on the part of the defender outside the home. These changes were incorporated into chapter 776, F.S., which governs the justifiable use of force.

The Expanded Castle Doctrine and Home Protection

The SYG law expanded the concept of the Castle Doctrine in two main ways. First, the law extended the concept of a person’s “castle” to include a dwelling, residence, or occupied vehicle.⁶ As a result, a person who acts in self-defense in this expanded castle generally has no duty to retreat before acting in self-defense.

Second, the SYG law created a presumption that a person within a “castle” has a reasonable fear of imminent peril of death or great bodily harm if two conditions are met.⁷ First, the intruder must have entered or be in the process of unlawfully and forcibly entering the dwelling, residence, or occupied vehicle or be attempting to forcibly remove a person. Second, the defender must know or had reason to believe that an unlawful and forcible entry had occurred or was occurring.⁸

Defense of Self or Others

The 2005 changes to the self-defense law also generally eliminated the duty to retreat before using force outside of a person’s dwelling, residence, or occupied vehicle. When acting in self-defense or in defense of others, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes the force is necessary to defend himself or herself or another against an imminent use of unlawful force.⁹ The person may use deadly force, if the person reasonably believes the force is necessary to prevent imminent death or great bodily harm to himself or herself. However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.¹⁰

⁶ Section 776.013(5), F.S., defines a dwelling as a temporary or permanent building or conveyance of any kind, including an attached porch with or without a roof, mobile or immobile, including a tent, provided that it is designed for nighttime lodging. A residence is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. A vehicle is a conveyance of any kind, whether or not motorized provided that it is designed to transport people or property.

⁷ Conversely, s. 776.013(4), F.S., presumes that a person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle intends to commit an unlawful act involving force or violence.

⁸ Section 776.013(1) and (2), F.S. The presumption does not apply if the person against whom defensive force is used or threatened has the right to be in or is a lawful resident of the location and against whom there is no injunction for protection; the person sought to be removed is in the lawful custody or guardianship of the person against whom the defensive force is used or threatened; the person who uses or threatens to use defensive force is committing a crime or using the location to further a criminal act; or the person against whom defensive force is used or threatened is a law enforcement officer entering the premises pursuant to an official duty and who identifies him or herself as a law enforcement officer. Section 776.013(2), F.S.

⁹ Section 776.012(1), F.S.

¹⁰ Section 776.012(2), F.S.

Defense of Property

When acting in defense of property, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes that the force is necessary to stop a trespasser's entry on personal or real property other than a dwelling.¹¹ A person may use deadly force, if the person reasonably believes deadly force is needed to prevent a forcible felony.¹² However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.¹³

Stand Your Ground Law in other States

At least 22 states have a version of the Stand Your Ground law. These laws provide that a defender does not have a duty to retreat from an attacker in any place in which the defender is lawfully present.¹⁴ These states having SYG laws include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.¹⁵ Nine of these states have adopted laws with specific language providing that a person may stand his or her ground.¹⁶

2014 Changes to Laws Governing the Justifiable Use of Force

In 2014, the Legislature revised chapter 776, F.S., which governs the justifiable use of force and includes the SYG law.¹⁷ The main change to the chapter was to clarify that a person who can lawfully use force in self-defense may also threaten to use force in self-defense. Further, the changes provided that a person who lawfully threatens to use force in self-defense retains all the rights and immunities under the SYG law.

However, the changes to s. 776.013(3), F.S., which authorize a person to threaten to use defensive force in his or her dwelling, residence, or vehicle may contain two drafting errors. One of these errors could cause the statute to be read to require that a person be attacked before he or

¹¹ Section 776.031(1), F.S.

¹² A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

¹³ Section 776.031(2), F.S.

¹⁴ *Self-defense and "Stand Your Ground,"* National Conference of State Legislatures (Aug. 30, 2013).

<http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx> (last visited Jan. 10, 2017).

¹⁵ Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18, s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

¹⁶ States including Stand Your Ground language in self-defense laws are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C)).

¹⁷ Chapter 2014-195, Laws of Fla.

she has the right to use defensive force. The problematic revisions to the 2014 legislation are shown below:

(3) A person ~~who is not engaged in an unlawful activity and~~ who is attacked in his or her dwelling, residence, or vehicle ~~in any other place where he or she has a right to be~~ has no duty to retreat and has the right to stand his or her ground and use or threaten to use ~~meet force with~~ force, including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2) ~~reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.~~

A requirement that a person be attacked before he or she has the right to use or threaten to use force in self-defense is inconsistent with other provisions of chapter 776, F.S. These other provisions state that the right to use force or threaten to use force in self-defense begins when a person “reasonably believes” that using or threatening to use force is necessary to prevent or terminate another person’s use of unlawful force.¹⁸

The other potential error made by the 2014 changes to the SYG law may in some cases require a person to retreat from his or her castle before using deadly force in self-defense. At common law, however, one was not required to retreat from his or her castle because a castle is a place of sanctuary and one inside the castle had already retreated to “the wall.” This potential duty to retreat from a castle was created by the insertion of cross-references in s. 776.013(3), F.S., the home protection statute, to statutes that address self-defense outside of a dwelling, residence, or vehicle.¹⁹

These cross-referenced statutes provide that outside of a “castle” a person must have a reasonable fear that deadly force is necessary to prevent imminent death, great bodily harm, or the commission of a forcible felony before deadly force is allowed. The person has the right to stand his or her ground if he or she is not “engaged in criminal activity.”

In contrast, inside a dwelling, residence, or vehicle a person is presumed to have a reasonable fear sufficient to justify deadly defensive force when an intruder unlawfully and forcibly enters or is entering.²⁰ However, the defender inside the castle loses the benefit of the presumption he or she is engaged in criminal activity.²¹

Accordingly, the cross-references in s. 776.031(3), F.S., to statutes relating to self-defense outside a castle may require a defender who is engaged in any criminal activity inside a castle to flee from the castle before he or she may lawfully use deadly force in self-defense.²² The type of

¹⁸ See ss. 776.012, 776.013(1) and 4, and 776.031, F.S.

¹⁹ *But see State ex rel. Florida Industrial Com. v. Willis*, 124 So. 2d 48, 51 (Fla. 1st DCA 1960) (stating that “a statute should not be construed to bring about an unreasonable or absurd result”).

²⁰ Section 776.013(1), F.S.

²¹ Section 776.013(2)(b), F.S.

²² Chapter 776, F.S., does not define “criminal activity.” As a result, a person who is engaged in minor criminal conduct or criminal acts that have no relationship to a violent confrontation may have a duty to retreat before using deadly force in self-defense that others in the same situation would not have.

criminal activity that might trigger the duty to retreat is not defined in chapter 776, F.S. As a result, a person who is engaged in a minor criminal act or a criminal act that has no relationship to a deadly threat might have a duty to retreat before using deadly force in self-defense that others in the same situation would not have.

III. Effect of Proposed Changes:

This bill addresses an inconsistency in the self-defense laws which was caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person's dwelling, residence, or vehicle. The bill also minimizes the circumstances in which a person might be required flee from a dwelling, residence, or vehicle before using deadly force in self-defense.

The relevant part of s. 776.013(3), F.S., which is inconsistent with other statutes 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. As a result of the inconsistency, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force uniformly state—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.²³

The bill revises s. 776.013(3), F.S., to delete the word "attacked," which makes the subsection more consistent with the other statutory provisions governing the right to use defensive force.

Existing s. 776.013(3), F.S., also includes cross-references to other statutes that restrict a defender from using deadly force outside of a dwelling, residence, or vehicle. The restrictions state that "A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be."²⁴

As a result of the incorporated restrictions, a person in a dwelling, residence, or vehicle who is engaged in criminal activity might have a duty to retreat within or flee from the dwelling, residence, or vehicle before he or she may lawfully use deadly force in self-defense. More specifically, this duty to retreat is described in the common law for circumstances outside a home as a duty to use "every reasonable means within his or her power to avoid the danger, including retreat."²⁵

²³ Section 776.013(1), F.S. (stating that a "person is presumed to have held a *reasonable fear* of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another"); s. 776.012, F.S., (stating the right to use defensive force begins when a person "*reasonably believes* that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force" or when the person "*reasonably believes* that using or threatening to use such force is necessary to prevent imminent death or great bodily harm"); s. 776.031, F.S. (stating that the right to use force begins when a person "*reasonably believes* that such conduct is necessary to" defend property or when the person "*reasonably believes* that such conduct is necessary to prevent the imminent commission of a forcible felony").

²⁴ Sections 776.012(2) and 776.031(2), F.S.

²⁵ *Weiland*, 732 So. 2d 1044, 1049 (Fla. 1999).

The bill provides that the criminal activity that might trigger a defender's duty to flee from a dwelling, residence, or vehicle does not include nonviolent misdemeanors.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The changes made by the bill minimize the risk that s. 776.013(3), F.S., can be read out of context with the other provisions of chapter 776, F.S., and used as the basis for arresting a person who lawfully uses force in self-defense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.013, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on March 29, 2017:

The CS/CS adds a provision to the underlying bill which provides that the criminal activity that might trigger a defender’s duty to flee from a dwelling, residence, or vehicle does not include nonviolent misdemeanors.

CS by Judiciary on March 22, 2017:

The CS replaces the substance of the original bill with an amendment to s. 776.013, F.S., to delete the word “attacked.”

- B. **Amendments:**

None.