

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

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SENATE BILL 34

Short Title: The Castle Doctrine.

(Public)

Sponsors: Senators Brock, D. Berger, Harrington; Apodaca, Clary, Daniel, Goolsby, Gunn, Hise, Jones, Newton, Pate, Preston, Soucek, Stevens, and Tucker.

Referred to: Judiciary II.

February 7, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A PERSON MAY USE DEFENSIVE FORCE TO PROTECT AGAINST THE UNLAWFUL AND FORCIBLE ENTRY INTO THE PERSON'S DWELLING BY ANOTHER, TO PREVENT THE REMOVAL OF A PERSON AGAINST HIS OR HER WILL FROM THE PERSON'S DWELLING, AND TO PROVIDE THAT A PERSON IS JUSTIFIED IN USING DEFENSIVE FORCE IN THESE CIRCUMSTANCES AND SO IS IMMUNE FROM CRIMINAL PROSECUTION AND CIVIL ACTION FOR THE USE OF SUCH FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

§ 14-51.2. Home protection; presumption of fear of death or great bodily harm; immunity from criminal prosecution and civil action for justifiable use of force.

(a) The following definitions apply in this section:

(1) Criminal prosecution. — The term includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) Dwelling. – 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.

(3) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(4) Residence. – A dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(b) 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 defensive force that is intended or likely to cause death or great bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling or residence, or if that person had removed or was attempting to remove another against that person's will from the dwelling or residence.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.



1 (c) The presumption set forth in subsection (b) of this section does not apply in any of
2 the following circumstances:

- 3 (1) The person against whom the defensive force is used has the right to be in or
4 is a lawful resident of the dwelling or residence, such as an owner or lessee,
5 and there is not an injunction for protection from domestic violence or a
6 written pretrial supervision order of no contact against that person.
- 7 (2) The person sought to be removed from the dwelling or residence is a child or
8 grandchild or is otherwise in the lawful custody or under the lawful
9 guardianship of the person against whom the defensive force is used.
- 10 (3) The person who uses defensive force is engaged in, attempting to escape
11 from, or using the dwelling or residence to further any criminal offense that
12 involves the use or threat of physical force or violence against any
13 individual.
- 14 (4) The person against whom the defensive force is used is a law enforcement
15 officer who enters or attempts to enter a dwelling or residence in the lawful
16 performance of his or her official duties, and the officer identified himself or
17 herself in accordance with any applicable law or the person using force knew
18 or reasonably should have known that the person entering or attempting to
19 enter was a law enforcement officer.
- 20 (5) The person against whom the defensive force is used (i) has discontinued all
21 efforts to unlawfully and forcefully enter the dwelling or residence and (ii)
22 has exited the dwelling or residence.

23 (d) A person who unlawfully and by force enters or attempts to enter a person's
24 dwelling or residence is presumed to be doing so with the intent to commit an unlawful act
25 involving force or violence.

26 (e) A person who uses force as permitted by this section is justified in using such force
27 and is immune from criminal prosecution and civil action for the use of such force, unless the
28 person against whom force was used is a law enforcement officer who was acting in the
29 performance of his or her official duties and the officer identified himself or herself in
30 accordance with any applicable law or the person using force knew or reasonably should have
31 known that the person was a law enforcement officer."

32 **SECTION 2.** G.S. 14-51.1 is repealed.

33 **SECTION 3.** This act becomes effective December 1, 2011, and applies to
34 offenses committed on or after that date. Prosecutions for offenses committed before the
35 effective date of this act are not abated or affected by this act, and the statutes that would be
36 applicable but for this act remain applicable to those prosecutions.