

March 25, 2009

S 928. THE CASTLE DOCTRINE. Filed 3/25/09. *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, TO PROVIDE THAT A PERSON WHO IS IN A PLACE WHERE THE PERSON HAS A RIGHT TO BE HAS NO DUTY TO RETREAT, 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.*

Repeals GS 14-51.1 (Use of deadly force against an intruder) and enacts new GS 14-51.2 providing that a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to self or another when using defensive force that is intended or likely to cause death or great bodily harm to another if (1) the person against whom the force was used was in the process of unlawfully and forcefully entering, or had so entered, a dwelling, or had removed or attempted to remove another from the dwelling and (2) the person using the deadly force knew or had reason to believe that such unlawful and forcible entry or removal had occurred.

The presumption does not apply if (1) the person against whom the force was used had a right to be in the dwelling, (2) the person removed is a child or grandchild or other person or under lawful custody or guardianship, (3) the person using the force is engaged in other unlawful activity, or (4) the person against whom the force is used is a law enforcement officer.

Provides that a person who is not engaged in an unlawful activity and who is attacked 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 meet force with force, including deadly force, if there is reason to believe such force is necessary to prevent death or great bodily harm.

Provides that a person who unlawfully and by force enters or attempts to enter another's dwelling is presumed to be doing so with intent to commit an unlawful act involving force or violence.

Provides immunity for a person using force as justified by circumstances described above.

Effective December 1, 2009, and applies to offenses committed on or after that date.

Intro. by Berger of Franklin.

GS 14

May 12, 2009

S 928. THE CASTLE DOCTRINE. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Amends proposed GS 14-51.2 to delete the definitions for *deadly force* and *forcible felony*. Clarifies that the fear of imminent peril presumption created in the proposed Act applies to the defense of a dwelling or residence (was, applied to a person not engaged in an unlawful activity in any other place where the person has a right to be has the right to meet force with force). Clarifies that the fear of imminent peril presumption does not apply to a person using defensive force in an attempt to escape from the dwelling or residence or in using the residence or dwelling to further any criminal offense that involves the use or threat of physical force or violence against any individual. Also clarifies that the exemption for law enforcement officers applies to a law enforcement officer who enters or attempts to enter a residence or dwelling in the *lawful* performance of the officer's official duties. Makes conforming changes to the title. Makes clarifying changes.