

By the Committee on Judiciary and Senator Crist

308-2138-98

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A bill to be entitled
An act relating to civil liability arising from
criminal conduct; amending s. 776.085, F.S.;
barring recovery of damages for personal injury
or injury to property in cases in which the
claimant has incurred damages while engaged in
certain criminal conduct; providing for the
court to award attorney's costs and travel
expenses to the prevailing party in any such
case; providing an effective date.

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

Section 1. Section 776.085, Florida Statutes, is
amended to read:

776.085 Defense to civil action for damages; party
committed ~~convicted of forcible~~ or attempted to commit a
~~forcible~~ felony or misdemeanor involving violence.--

(1) It shall be a defense to any action for damages
for personal injury or wrongful death, or for injury to
property, that such action arose from injury sustained by a
participant during the commission or attempted commission of a
~~forcible~~ felony or misdemeanor involving violence, including,
but not limited to, battery and domestic violence. The defense
authorized by this section shall be established by evidence
that the participant has committed a ~~been convicted of such~~
~~forcible~~ felony or misdemeanor involving violence, including,
but not limited to, battery and domestic violence, or
attempted to commit a forcible felony or misdemeanor involving
violence, including, but not limited to, battery and domestic

1 violence, or by proof of the commission of such crime or
2 attempted crime by a preponderance of the evidence.

3 ~~(2) For the purposes of this section, the term~~
4 ~~"forcible felony" shall have the same meaning as in s. 776.08.~~

5 (2)~~(3)~~ Any civil action in which the defense
6 recognized by this section is raised shall be stayed by the
7 court on the motion of the civil defendant during the pendency
8 of any criminal action which forms the basis for the defense,
9 unless the court finds that a conviction in the criminal
10 action would not form a valid defense under this section.

11 (3)~~(4)~~ In any civil action where a party prevails
12 based on the defense created by this section:

13 (a) The losing party, if convicted of and incarcerated
14 for the crime or attempted crime, shall, as determined by the
15 court, lose any privileges provided by the correctional
16 facility, including, but not limited to:

- 17 1. Canteen purchases;
- 18 2. Telephone access;
- 19 3. Outdoor exercise;
- 20 4. Use of the library; and
- 21 5. Visitation.

22 (b) The court shall award ~~a~~ reasonable attorney's fees
23 and costs, including reasonable travel expenses,~~fee~~ to be
24 paid to the prevailing party in equal amounts by the losing
25 party and the losing party's attorney; however, the losing
26 party's attorney is not personally responsible if he or she
27 has acted in good faith, based on the representations of his
28 or her client. If the losing party is incarcerated for the
29 crime or attempted crime and has insufficient assets to cover
30 payment of the costs of the action and the award of fees
31 pursuant to this paragraph, the party shall, as determined by

1 the court, be required to pay by deduction from any payments
2 the prisoner receives while incarcerated.

3 (c) If the losing party is incarcerated for the crime
4 or attempted crime, the court shall issue a written order
5 containing its findings and ruling pursuant to paragraphs (a)
6 and (b) and shall direct that a certified copy be forwarded to
7 the appropriate correctional institution or facility.

8 Section 2. This act shall take effect July 1, 1998.

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 Senate Bill 206

13 The Committee Substitute for Senate Bill 206 amends s.
14 776.085, F.S., in the following ways:

- 15 - It provides a defense to civil actions arising out of the
16 commission of any felony or violent misdemeanor; and
17 - It provides costs and fees and reasonable travel expenses
18 to prevailing parties.
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