

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senators Posey and Mitchell

316-1916-02

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A bill to be entitled
An act relating to actions against law enforcement officers; amending s. 111.065, F.S.; redefining the term "law enforcement officer" for purposes of the payment of costs and attorney's fees in certain actions commenced against a law enforcement officer; revising circumstances under which the employing or sponsoring agency of a law enforcement officer has the option of paying legal costs and attorney's fees in an action arising out of the officer's official duties; requiring that an officer's employing or sponsoring agency pay legal costs and attorney's fees under certain circumstances involving an emergency, imminent death or bodily harm, or the pursuit or apprehension of an offender; providing for jurisdiction relating to legal costs and attorney's fees; providing an effective date.

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

Section 1. This act may be cited as the "Law Enforcement Fair Defense Act."

Section 2. Section 111.065, Florida Statutes, is amended to read:

111.065 Law enforcement officers, civil or criminal action against; employer or sponsor payment of costs and attorney's fees.--

1 (1) As used in this section, the term ~~For the purpose~~
2 ~~of this act,~~ "law enforcement officer" means any officer
3 defined in s. 943.10(14) of ~~person employed full time by any~~
4 municipality or the state or any political subdivision thereof
5 ~~or any deputy sheriff whose primary responsibility is the~~
6 ~~prevention and detection of crime or the enforcement of the~~
7 ~~penal, traffic, or highway laws of this state.~~

8 (2) The employing or sponsoring agency of any law
9 enforcement officer shall have the option to pay the legal
10 costs and reasonable attorney's fees for any law enforcement
11 officer in any civil or criminal action commenced against such
12 law enforcement officer in any court when the action arose out
13 of the performance of the officer's official duties and:

14 (a) The civil or criminal action is dismissed or not
15 prosecuted ~~plaintiff requests dismissal of the suit; or~~

16 (b) The ~~Such~~ law enforcement officer is found to be
17 not liable or not guilty.

18 (3) However, the employing or sponsoring agency shall
19 pay the legal costs and reasonable attorney's fees for a civil
20 or criminal action commenced against a law enforcement
21 officer, as defined in subsection (1), if the action:

22 (a) Is resolved as provided in paragraph (2)(a) or
23 paragraph (2)(b);

24 (b) Arose while the officer was acting within the
25 course and scope of the officer's official duties;

26 (c)1. Occurred in response to what the officer
27 reasonably believed was an emergency;

28 2. Was necessary to protect the officer or others from
29 imminent death or bodily harm; or

30 3. Occurred in the course of the officer's fresh
31 pursuit, apprehension, or attempted apprehension of a suspect

1 whom the officer reasonably believes has perpetrated or
2 attempted to perpetrate a forcible felony or the offense of
3 escape; and

4 (d) Is not a willful act that constitutes a material
5 departure from the employing or sponsoring agency's written
6 policies and procedures, or from generally recognized criminal
7 justice standards if no written policies or procedures exist.

8 (4) In determining the employing or sponsoring
9 agency's responsibility for and amount of legal costs and
10 reasonable attorney's fees, the court before which the action
11 was heard shall retain jurisdiction of the matter to
12 determine:

13 (a) The issue of responsibility on the part of the
14 employing or sponsoring agency for payment of legal costs and
15 reasonable attorney's fees;

16 (b) The appropriate amount of legal costs to be
17 awarded in the matter; and

18 (c) The appropriate amount of reasonable attorney's
19 fees and recoverable costs, not to exceed \$100,000, to be
20 awarded, which amount must be based upon the prevailing rate
21 for the appropriate defense of such matters for the circuit in
22 which the action was brought.

23
24 No lodestar provisions apply to this section.

25 Section 3. This act shall take effect upon becoming a
26 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1046

4
5 Deletes the requirement that a law enforcement officer
6 be employed full-time before a municipality, political
7 subdivision or state employer may pay attorney's fees
8 for the defense of that officer in a civil or criminal
9 action.

10 Would expand the types of employing agencies who must
11 pay a law enforcement officer's costs and attorney's
12 fees to include officers employed by the state, in
13 addition to those employed by a political subdivision of
14 the state.

15 Imposes the additional condition that the action of the
16 law enforcement officer at issue was not a willful act
17 that violates the employing or sponsoring agency's
18 written policy or departs from recognized criminal
19 justice standards, if no written policies exist, before
20 the employing agency must pay officials attorney's fees
21 and costs.

22 Provides that the court with jurisdiction of the action
23 against the law enforcement officer determines whether
24 an employing agency is responsible for attorney's fees
25 and costs and limits the amount of such fees and costs
26 to \$100,000.
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