

By the Committees on Judiciary; Comprehensive Planning, Local and Military Affairs; and Senator Mitchell

308-2215-02

1 A bill to be entitled
2 An act relating to actions against law
3 enforcement officers; amending s. 111.065,
4 F.S.; redefining the term "law enforcement
5 officer" for purposes of the payment of costs
6 and attorney's fees in certain actions
7 commenced against a law enforcement officer;
8 revising circumstances under which the
9 employing agency of a law enforcement officer
10 has the option of paying legal costs and
11 attorney's fees in an action arising out of the
12 officer's official duties; requiring that an
13 officer's employing agency pay legal costs and
14 attorney's fees under certain circumstances
15 involving an emergency, imminent death or
16 bodily harm, or the pursuit or apprehension of
17 an offender; providing for jurisdiction
18 relating to legal costs and attorney's fees;
19 providing an effective date.

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

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

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

27 111.065 Law enforcement officers, civil or criminal
28 action against; employer payment of costs and attorney's
29 fees.--

30 (1) For the purpose of this section only ~~act~~, the term
31 "officer" means any law enforcement officer, corrections

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

8 (2) The employing agency of any ~~law enforcement~~
9 officer has ~~shall have~~ the option to pay ~~the legal costs and~~
10 reasonable attorney's fees and costs 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 plaintiff requests dismissal of the suit; or

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

17 (3) The employing agency shall provide an attorney and
18 pay the reasonable attorney's fees and costs for any officer
19 in any criminal action commenced against an officer in any
20 court, provided that the employing agency determines that the
21 officer's actions that gave rise to the charges:

22 (a)1. Occurred in response to what the officer
23 reasonably believed was an emergency;

24 2. Occurred when the officer reasonably believed that
25 his or her action was necessary to protect the officer or
26 others from imminent death or bodily harm; or

27 3. Occurred in the course of the officer's fresh
28 pursuit, apprehension, or attempted apprehension of a suspect
29 whom the officer reasonably believes has perpetrated, or
30 attempted to perpetrate, a forcible felony as defined in s.
31 776.08, or the offense of escape;

1 (b) Arose within the course and scope of the officer's
2 duties; and

3 (c) Were not acts of omission or commission which
4 constituted a material departure from the employing agency's
5 written policies and procedures, or generally recognized
6 criminal justice standards if no written policies or
7 procedures exist.

8 (4)(a) In actions where legal representation is
9 requested pursuant to subsection (3) and the employing agency
10 does not provide an attorney or the officer does not use the
11 employing agency's attorney, the officer may:

12 1. Select from a list of attorneys provided by the
13 employing agency; or

14 2. Choose his or her own attorney.

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16 The officer may request the employing agency to reimburse
17 reasonable attorney's fees and costs, provided that the
18 officer's actions giving rise to the charges did not result in
19 the dismissal of charges, in the entry of a plea of guilty or
20 nolo contendere, or in a finding of guilt by a court or jury
21 to any offense charged or any lesser or included offense that
22 is substantially related to the offense charged.

23 (b) If legal representation is provided in accordance
24 with paragraph (a), the amount of reasonable attorney's fees
25 and costs shall be determined as follows:

26 1. The officer shall submit an application for payment
27 of reasonable attorney's fees and costs to the employing
28 agency, and the employing agency and the officer must agree on
29 a reasonable attorney's fee and costs to be paid within 30
30 days after the application for payment.

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1 2. The application for reasonable attorney's fees and
2 costs must include an itemization statement, from an attorney
3 or expert witness representing or appearing in behalf of the
4 officer, stating the actual time expended and the rate at
5 which fees and other expenses were computed.

6 3. If the officer and the employing agency do not
7 reach an agreement or payment is not provided within 30 days,
8 the officer requesting payment of attorney's fees and costs
9 shall submit the application to the court having jurisdiction
10 over the prosecution within 30 days after the failure to reach
11 an agreement or 30 days after conclusion of the prosecution
12 against the officer, whichever is later. Such court shall
13 retain jurisdiction of the matter in order to determine
14 entitlement to payment and the amount of reasonable attorney's
15 fees and costs.

16 4. If no agreement is reached between the officer and
17 the employing agency as provided under subparagraph 3., the
18 employing agency shall have the right to respond to the
19 application for attorney's fees and costs. The court shall
20 make its determination as to entitlement and amount of
21 reasonable attorney's fees and costs based on:

22 a. Prevailing market rates in the appropriate market
23 area for defense of similar actions, as well as other relevant
24 factors; and

25 b. Whether the officer's actions complied with the
26 requirements of paragraphs (3)(a), (b) and (c).

27 (d) No lodestar or fee multiplier provision may be
28 used in any criminal prosecution defended pursuant to this
29 subsection, and in no event shall the attorney's fees and
30 costs awarded exceed the sum of \$100,000.

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1 Section 3. This act shall take effect upon becoming a
2 law.

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4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 CS for Senate Bill 1046

7 Redefines the class of law enforcement officers who may
8 qualify for the provision and payment of legal representation
9 associated with his or her defense in a civil or criminal
10 action;

11 Clarifies the circumstances under which a governmental
12 employing entity must provide and pay for legal representation
13 of an officer in criminal actions.

14 Specifies the process under which an officer can alternatively
15 seek reimbursement for fees and costs associated with the
16 legal representation in the event that an attorney is not
17 provided by the employing entity or the officer does not use
18 the employing entity's attorney.
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