

Amendment No. 1s (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 The Committee on Local Government & Veterans Affairs offered
12 the following:

14 **Amendment (with title amendment)**

15 Remove everything after the enacting clause

17 and insert:

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

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

22 111.065 Law enforcement officers, civil or criminal
23 action against; employer payment of costs and attorney's
24 fees.--

25 For purposes of s. 111.065:

26 ~~(1) For the purpose of this act, "Law enforcement~~
27 ~~officer" and "officer" shall mean any law enforcement officer,~~
28 ~~corrections officer, or correctional probation officer as~~
29 ~~defined in s. 943.10(1), (2), and (3), who is person employed~~
30 ~~full time by any municipality, or the state, or any political~~
31 ~~subdivision thereof or any deputy sheriff whose primary~~

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1 ~~responsibility is the prevention and detection of crime or the~~
2 ~~enforcement of the penal, traffic, or highway laws of this~~
3 ~~state.~~

4 (1)(2) The employing agency of any law enforcement
5 officer ~~has~~ ~~shall have~~ the option to pay ~~the legal costs and~~
6 reasonable attorney's fees and costs for any law enforcement
7 officer in any civil or criminal action commenced against such
8 law enforcement officer in any court when the action arose in
9 ~~out of~~ the performance of the officer's official duties and:

10 (a) The plaintiff requests dismissal of the suit; or

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

13 (2) The employing agency shall provide for reasonable
14 legal representation and costs for any law enforcement officer
15 in any criminal action commenced against a law enforcement
16 officer in any court:

17 (a) Provided that the officer's actions that gave rise
18 to the charges:

19 1. Occurred in response to what the officer reasonably
20 believed was an emergency; or

21 2. Occurred when the officer reasonably believed his
22 or her action was necessary to protect the officer or others
23 from imminent death or bodily harm; or

24 3. Occurred in the course of the officer's fresh
25 pursuit, apprehension, or attempted apprehension of a suspect
26 whom the officer reasonably believes has perpetrated, or
27 attempted to perpetrate, a forcible felony, or the offense of
28 escape.

29 (b) However, subsection (2) shall not apply unless the
30 officer's actions that gave rise to the charges arose in the
31 course and scope of the officer's duties, and:

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- 1 1. The charges are dismissed; or
2 2. The law enforcement officer is found not guilty of
3 the charged offense, and any other lesser or included offense
4 that is substantially related to the charged offense.

5 (c) Subsection (2) shall not apply if the officer's
6 actions that gave rise to the charges were acts of omission or
7 commission which constituted a material departure from the
8 employing agency's written policies and procedures, or
9 generally recognized criminal justice standards, should no
10 written policies or procedures exist.

11 (d) Subsection (2) shall not apply where a plea of
12 "guilty" or "nolo contendere" is entered, or upon a finding of
13 guilt by a court or jury to any charge for which adjudication
14 was imposed or withheld.

15 (3) For the purposes of subsection (2), legal
16 representation shall be provided by the employing agency by
17 providing an attorney to the law enforcement officer. If the
18 employing agency is unable to provide an attorney, then either
19 by:

20 (a) Providing a list of attorneys from which the law
21 enforcement officer may select, and who the employing agency
22 agrees to retain; or

23 (b) By the payment of reasonable attorney's fees and
24 costs for the law enforcement officer as defined below.

25 1. In the event legal representation is provided by
26 the employing agency as provided by subsection (3)(b), the
27 amount of reasonable attorney's fees shall be determined as
28 follows:

29 a. The law enforcement officer requesting payment of
30 attorney's fees and costs shall submit an application to the
31 court having jurisdiction over the prosecution within thirty

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1 (30) days of conclusion of the prosecution against the law
2 enforcement officer, and that court shall retain jurisdiction
3 of the matter in order to determine entitlement to payment of
4 reasonable attorney's fees and costs and the amount of
5 recoverable attorney's fees and costs; and

6 b. The application shall include an itemization
7 statement from an attorney or expert witness representing or
8 appearing in behalf of the law enforcement officer, stating
9 the actual time expended and the rate at which fees and other
10 expenses were computed; and

11 c. The employing agency shall have the right to
12 respond to the application for attorney's fees and costs,
13 after which the court will make its determination as to
14 reasonable attorney's fees and costs based on:

15 (i) Prevailing market rates in the appropriate market
16 area for defense of similar actions, as well as other relevant
17 factors; and

18 (ii) Whether the officer's actions that gave rise to
19 the charges constituted a material departure from the
20 employing agency's written policies and procedures, or
21 generally recognized criminal justice standards, should no
22 written policies or procedures exist.

23 d. No lodestar or fee multiplier provision may be
24 used in any criminal prosecution defended pursuant to this
25 section, and in no event shall the attorney's fees and costs
26 awarded exceed the sum of \$100,000.

27 Section 3. This act shall take effect upon becoming a
28 law.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 2,
4 remove: the entire title

5
6 and insert:

7 An act relating to actions against law
8 enforcement officers; amending s. 111.065,
9 F.S.; redefining the term "law enforcement
10 officer" for purposes of the payment of costs
11 and attorney's fees in certain actions
12 commenced against a law enforcement officer;
13 revising language to provide for consistency
14 throughout the act; requiring that an officer's
15 employing agency provide for legal
16 representation and costs under certain
17 circumstances involving an emergency, imminent
18 death or bodily harm, or the pursuit or
19 apprehension of an offender; providing methods
20 by wich an employing agency can provide for
21 reasonable legal representation and costs;
22 providing an effective date.

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