



CHAMBER ACTION

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The Committee on Public Safety & Crime Prevention recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to actions against law enforcement, correctional, and correctional probation officers; amending s. 111.065, F.S.; providing a popular name; redefining the term "officer" for purposes of the payment of costs and attorney's fees in certain actions commenced against an officer; revising circumstances under which the employing agency of an 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 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 certain limitations of the amount awarded; providing an effective date.



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

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31 Section 1. This act shall be known by the popular name
32 "Law Enforcement Fair Defense Act."

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

35 111.065 Law enforcement, correctional, and correctional
36 probation officers, civil or criminal action against; employer
37 payment of costs and attorney's fees.--

38 (1) For the purpose of this section only ~~act~~, the term
39 "officer" ~~"law enforcement officer"~~ means any law enforcement
40 officer, correctional officer, or correctional probation officer
41 as defined in s. 943.10(1), (2), and (3) who is ~~person~~ employed
42 full time by any municipality, ~~or~~ the state, or any political
43 subdivision thereof ~~or any deputy sheriff whose primary~~
44 ~~responsibility is the prevention and detection of crime or the~~
45 ~~enforcement of the penal, traffic, or highway laws of this~~
46 ~~state.~~

47 (2) The employing agency of any ~~law enforcement~~ officer
48 has ~~shall have~~ the option to pay ~~the legal costs and~~ reasonable
49 attorney's fees and costs for any ~~law enforcement~~ officer in any
50 civil or criminal action commenced against such ~~law enforcement~~
51 officer in any court when the action arose in ~~out of~~ the
52 performance of the officer's official duties and:

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

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



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56 (3) The employing agency shall provide an attorney and pay
57 the reasonable attorney's fees and costs for any officer in any
58 criminal action commenced against any officer in any court if
59 the employing agency determines that the officer's actions that
60 gave rise to the charges:

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

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

66 3. Occurred in the course of the officer's fresh pursuit,
67 apprehension, or attempted apprehension of a suspect whom the
68 officer reasonably believed had perpetrated, or attempted to
69 perpetrate, a forcible felony as defined in s. 776.08, or the
70 offense of escape.

71 (b) Arose within the course and scope of the officer's
72 duties.

73 (c) Were not acts of omission or commission which
74 constituted a material departure from the employing agency's
75 written policies and procedures or generally recognized criminal
76 justice standards if no written policies or procedures exist.

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

81 1. Select from a list of attorneys provided by the
82 employing agency; or

83 2. Choose his or her own attorney.



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85 The officer may request the employing agency to reimburse
86 reasonable attorney's fees and costs if the officer's actions
87 giving rise to the charge did not result in the entry of a plea
88 of guilty or nolo contendere, or in a finding of guilt by a
89 court or jury to any offense charged or any lesser or included
90 offense that is substantially related to the offense charged.

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

94 1. The officer shall submit an application for payment of
95 reasonable attorney's fees and costs to the employing agency and
96 the employing agency and the officer must agree on a reasonable
97 attorney's fee and costs to be paid within 30 days after the
98 application for payment. The officer may only apply for
99 attorney's fees and costs incurred in the actual defense of the
100 prosecution of criminal charges, and the officer is not entitled
101 to seek or collect attorney's fees and costs related to efforts
102 to collect attorney's fees and costs under this section.

103 2. The application for reasonable attorney's fees and
104 costs must include an itemization statement, from an attorney or
105 expert witness representing or appearing on behalf of the
106 officer, stating the actual time expended and the rate at which
107 fees and other expenses were computed.

108 3. If the officer and the employing agency do not reach an
109 agreement or payment is not provided within 30 days, the officer
110 requesting payment of attorney's fees and costs shall submit the
111 application to the court having jurisdiction over the



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112 prosecution within 30 days after the failure to reach an
113 agreement or 30 days after conclusion of the prosecution against
114 the officer, whichever is later. Such court shall retain
115 jurisdiction of the matter in order to determine entitlement to
116 payment and the amount of reasonable attorney's fees and costs.

117 4. If no agreement is reached between the officer and the
118 employing agency as provided under subparagraph 3., the
119 employing agency shall have the right to respond to the
120 application for attorney's fees and costs. The court shall make
121 its determination as to entitlement and amount of reasonable
122 attorney's fees and costs based on:

123 a. Prevailing market rates in the appropriate market area
124 for defense of similar actions, as well as other relevant
125 factors.

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

128 (c) A lodestar or fee multiplier provision may not be used
129 in any criminal prosecution defended pursuant to this subsection
130 and the attorney's fees and costs awarded may not exceed
131 \$100,000.

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