

By the Committee on Comprehensive Planning; and Senators Posey and Argenziano

316-1884-03

1 A bill to be entitled
2 An act relating to actions against law
3 enforcement officers; providing a short title;
4 amending s. 111.065, F.S.; redefining the term
5 "law enforcement officer" for purposes of the
6 payment of costs and attorney's fees in certain
7 actions commenced against a law enforcement
8 officer; 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 certain limitations of the amount
20 awarded; providing an effective date.

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

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

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

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

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

10 (2) The employing agency of any ~~law enforcement~~
11 officer has ~~shall have~~ the option to pay ~~the legal costs and~~
12 reasonable attorney's fees and costs for any ~~law enforcement~~
13 officer in any civil or criminal action commenced against such
14 ~~law enforcement~~ officer in any court when the action arose out
15 of the performance of the officer's official duties and:
16 (a) The plaintiff requests dismissal of the suit; or
17 (b) The ~~Such law enforcement~~ officer is found to be
18 not liable or not guilty.

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

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

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

29 3. Occurred in the course of the officer's fresh
30 pursuit, apprehension, or attempted apprehension of a suspect
31 whom the officer reasonably believes has perpetrated, or

1 attempted to perpetrate, a forcible felony as defined in s.
2 776.08, or the offense of escape;

3 (b) Arose within the course and scope of the officer's
4 duties; and

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

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

14 1. Select from a list of attorneys provided by the
15 employing agency; or

16 2. Choose his or her own attorney.

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

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

28 1. The officer shall submit an application for payment
29 of reasonable attorney's fees and costs to the employing
30 agency and the employing agency and the officer must agree on

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1 a reasonable attorney's fee and costs to be paid within 30
2 days after the application for payment.

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

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

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

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

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

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

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

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 478

9 The Committee Substitute makes technical and editorial changes
10 to several provisions.

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