

By the Committees on Criminal Justice; Comprehensive Planning; and Senators Posey, Argenziano, Fasano and Smith

307-2016-03

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 believed had 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  
31 a reasonable attorney's fee and costs to be paid within 30

1 days after the application for payment. The officer may only  
2 apply for attorney's fees and costs incurred in the actual  
3 defense of the prosecution of criminal charges, and the  
4 officer is not entitled to seek or collect attorney's fees and  
5 costs related to efforts to collect attorney's fees and costs  
6 under this section.

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

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

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

28 a. Prevailing market rates in the appropriate market  
29 area for defense of similar actions, as well as other relevant  
30 factors; and

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

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

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

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10                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
11   COMMITTEE SUBSTITUTE FOR  
12   CS/SB 478

13 The CS amends the bill to prevent an officer from seeking or  
14 collecting attorney's fees and costs incurred related to  
15 efforts to collect the attorney's fees and costs authorized by  
16 the bill.  
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