

By Senator Posey

24-285-04

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 a criminal action commenced against the 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) If legal representation is requested under
11 subsection (3) and the employing agency determines that the
12 conditions set forth in subsection (3) have not been satisfied
13 or the officer does not choose to use the employing agency's
14 designated attorney, the officer may:

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

17 2. Choose his or her own attorney.

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

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

29 1. The officer shall submit an application for payment
30 of reasonable attorney's fees and costs to the employing
31 agency no later than 30 days after termination of the criminal

1 action. Thereafter, the employing agency and the officer must
2 agree on reasonable attorney's fees and costs to be paid
3 within 30 days after submitting the application for payment.
4 The officer may only apply for attorney's fees and costs
5 incurred in the actual defense of the prosecution of criminal
6 charges, and the officer is not entitled to seek or collect
7 attorney's fees and costs related to efforts to collect
8 attorney's fees and costs under this section.

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

14 3. If the officer and the employing agency do not
15 reach an agreement or if payment is not provided within the
16 specified time, the officer requesting payment of attorney's
17 fees and costs may submit the application to the court having
18 jurisdiction over the criminal action within 30 days after the
19 termination of the criminal action, failure to reach an
20 agreement, or failure to pay the fees or costs, whichever is
21 later. The court shall retain jurisdiction of the matter in
22 order to determine entitlement to payment and the amount of
23 reasonable attorney's fees and costs.

24 4. If the officer files an application for attorney's
25 fees and costs with the court, the employing agency shall have
26 the right to respond to the application. The court shall make
27 its determination as to entitlement and amount of reasonable
28 attorney's fees and costs based on:

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