

HB 0451

2004

A bill to be entitled

An act relating to actions against law enforcement officers, correctional officers, and correctional probation officers; providing a popular name; amending s. 111.065, F.S.; expanding the application of provisions relating to the payment of costs and attorney's fees in certain civil and criminal actions to include correctional officers and correctional probation officers; revising a definition to conform; revising circumstances under which the employing agency of such officers has the option of paying legal costs and attorney's fees in an action arising out of the officers' official duties; requiring the employing agency of such officers to pay legal costs and attorney's fees under certain circumstances involving an emergency, imminent death or bodily harm, or the pursuit, apprehension, or attempted apprehension of certain offenders; providing for jurisdiction relating to legal costs and attorney's fees; providing certain limitations of the amount awarded; amending s. 633.175, F.S.; revising a cross reference to conform; providing an effective date.

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

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

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

HB 0451

2004

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

32           (1) For the purpose of this section only ~~act~~, the term  
 33 "officer" means any law enforcement officer, correctional  
 34 officer, or correctional probation officer as defined in s.  
 35 943.10(1), (2), or (3) who is ~~"law enforcement officer" means~~  
 36 ~~any person~~ employed full time by any municipality or the state  
 37 or any political subdivision thereof ~~or any deputy sheriff whose~~  
 38 ~~primary responsibility is the prevention and detection of crime~~  
 39 ~~or the enforcement of the penal, traffic, or highway laws of~~  
 40 ~~this state.~~

41           (2) The employing agency of any ~~law enforcement~~ officer  
 42 has ~~shall have~~ the option to pay ~~the legal costs and~~ reasonable  
 43 attorney's fees and costs for any ~~law enforcement~~ officer in any  
 44 civil or criminal action commenced against such ~~law enforcement~~  
 45 officer in any court when the action arose out of the  
 46 performance of the officer's official duties and:

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

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

50           (3) Notwithstanding subsection (2), the officer may  
 51 request and, if requested, the employing agency shall provide an  
 52 attorney and pay the reasonable attorney's fees and costs for  
 53 any officer in a criminal prosecution commenced against the  
 54 officer in any court if the employing agency determines that the  
 55 officer's actions that gave rise to the prosecution:

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

HB 0451

2004

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

61       3. Occurred in the course of the officer's fresh pursuit,  
 62 apprehension, or attempted apprehension of a suspect who the  
 63 officer reasonably believed had perpetrated, or attempted to  
 64 perpetrate, a forcible felony as defined in s. 776.08 or the  
 65 offense of escape;

66       (b) Arose within the course and scope of the officer's  
 67 duties; and

68       (c) Were not acts of omission or commission which  
 69 constituted a material departure from the employing agency's  
 70 written policies and procedures, or generally recognized  
 71 criminal justice standards if no written policies or procedures  
 72 exist.

73       (4)(a) If legal representation is requested under  
 74 subsection (3) and the employing agency determines that the  
 75 conditions set forth in subsection (3) have not been satisfied  
 76 or the officer does not choose to use the employing agency's  
 77 designated attorney, the officer may:

78       1. Select from a list of attorneys provided by the  
 79 employing agency; or

80       2. Choose his or her own attorney.

81  
 82 The officer may request the employing agency to reimburse  
 83 reasonable attorney's fees and costs if the officer's actions  
 84 giving rise to the prosecution did not result in the entry of a  
 85 plea of guilty or nolo contendere or in a finding of guilt by a

HB 0451

2004

86 court or jury to any offense charged or any lesser or included  
 87 offense that is substantially related to any offense charged.

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

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

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

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

107 3. If the officer and the employing agency do not reach an  
 108 agreement or if payment is not provided within the specified  
 109 time, the officer requesting payment of attorney's fees and  
 110 costs may submit the application to the court having  
 111 jurisdiction over the criminal action within 30 days after the  
 112 termination of the prosecution, failure to reach an agreement,  
 113 or failure to pay the fees or costs, whichever is later. The  
 114 court shall retain jurisdiction of the matter in order to

HB 0451

2004

115 determine entitlement to payment and the amount of reasonable  
 116 attorney's fees and costs.

117 4. If the officer files an application for attorney's fees  
 118 and costs with the court, the employing agency shall have the  
 119 right to respond to the application. The court shall make its  
 120 determination as to entitlement and amount of reasonable  
 121 attorney's fees and costs based on:

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

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

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

130 Section 3. Subsection (1) of section 633.175, Florida  
 131 Statutes, is amended to read:

132 633.175 Investigation of fraudulent insurance claims and  
 133 crimes; immunity of insurance companies supplying information.--

134 (1) The State Fire Marshal or an agent appointed pursuant  
 135 to s. 633.02, any law enforcement officer as defined in s.  
 136 943.10(1) ~~111.065~~, any law enforcement officer of a federal  
 137 agency, or any fire department official who is engaged in the  
 138 investigation of a fire loss may request any insurance company  
 139 or its agent, adjuster, employee, or attorney, investigating a  
 140 claim under an insurance policy or contract with respect to a  
 141 fire to release any information whatsoever in the possession of  
 142 the insurance company or its agent, adjuster, employee, or  
 143 attorney relative to a loss from that fire. The insurance

HB 0451

2004

144 company shall release the available information to and cooperate  
145 with any official authorized to request such information  
146 pursuant to this section. The information shall include, but  
147 shall not be limited to:

148 (a) Any insurance policy relevant to a loss under  
149 investigation and any application for such a policy.

150 (b) Any policy premium payment records.

151 (c) The records, reports, and all material pertaining to  
152 any previous claims made by the insured with the reporting  
153 company.

154 (d) Material relating to the investigation of the loss,  
155 including statements of any person, proof of loss, and other  
156 relevant evidence.

157 (e) Memoranda, notes, and correspondence relating to the  
158 investigation of the loss in the possession of the insurance  
159 company or its agents, adjusters, employees, or attorneys.

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