

## Senate Bill No. 226

An act relating to actions against law enforcement officers; providing a short title; amending s. 111.065, F.S.; redefining the term “law enforcement officer” for purposes of the payment of costs and attorney’s fees in certain actions commenced against a law enforcement officer; revising circumstances under which the employing agency of a law enforcement 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.

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

Section 1. This act may be cited as the “Law Enforcement Fair Defense Act.”

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

111.065 Law enforcement officers, civil or criminal action against; employer payment of costs and attorney’s fees.—

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

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

- (a) The plaintiff requests dismissal of the suit; or
- (b) The Such law enforcement officer is found to be not liable or not guilty.

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

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

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

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

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

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

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

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

2. Choose his or her own attorney.

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

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

1. The officer shall submit an application for payment of reasonable attorney's fees and costs to the employing agency no later than 30 days after termination of the criminal action. Thereafter, the employing agency and the officer must agree on reasonable attorney's fees and costs to be paid within 30 days after submitting the application for payment. The officer may only apply for attorney's fees and costs incurred in the actual defense of the prosecution of criminal charges, and the officer is not entitled to seek or collect attorney's fees and costs related to efforts to collect attorney's fees and costs under this section.

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

3. If the officer and the employing agency do not reach an agreement or if payment is not provided within the specified time, the officer requesting payment of attorney's fees and costs may submit the application to the court

having jurisdiction over the criminal action within 30 days after the termination of the criminal action, failure to reach an agreement, or failure to pay the fees or costs, whichever is later. The court shall retain jurisdiction of the matter in order to determine entitlement to payment and the amount of reasonable attorney's fees and costs.

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

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

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

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

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

Approved by the Governor May 12, 2004.

Filed in Office Secretary of State May 12, 2004.