

By Senator Bradley

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1 A bill to be entitled
2 An act relating to justifiable use or threatened use
3 of defensive force; amending s. 776.032, F.S.;
4 providing legislative findings and intent; providing
5 for retroactive application; specifying that once a
6 prima facie claim of self-defense immunity has been
7 raised, the burden of proof shall be on the party
8 seeking to overcome the immunity from criminal
9 prosecution; providing a directive to the Division of
10 Law Revision and Information; creating s. 939.061,
11 F.S.; entitling criminal defendants who successfully
12 claim immunity under s. 776.032, F.S., to an award of
13 specified costs, attorney fees, and related expenses;
14 specifying a procedure for submitting reimbursement
15 requests; requiring the Justice Administrative
16 Commission to review and approve the reimbursement
17 request if the requested costs, fees, and related
18 expenses are reasonable and supported by valid
19 documentation; requiring reimbursements to be paid
20 from the operating trust fund of the state attorney
21 who prosecuted the defendant; limiting the amount of
22 the award; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Section 776.032, Florida Statutes, is amended to
27 read:

28 776.032 Immunity from criminal prosecution and civil action
29 for justifiable use or threatened use of force.-

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30 (1) The Legislature finds that imposing the burden of proof
31 on a person who uses or threatens to use defensive force as
32 permitted by general law at a pretrial evidentiary hearing
33 substantially curtails the benefit of the immunity from trial
34 provided by this section. The Legislature intends to make it
35 explicit that the state shall bear the burden of proof in
36 establishing beyond a reasonable doubt whether a defendant is
37 entitled to a prima facie claim of self-defense immunity at a
38 pretrial evidentiary hearing. The Legislature has never intended
39 that a person who acts in defense of self, others, or property
40 be denied immunity and subjected to trial when that person would
41 be entitled to acquittal at trial. The amendments to this
42 section made by this act are intended to correct
43 misinterpretations of legislative intent made by the courts and
44 shall apply retroactively to proceedings pending at the time
45 this act becomes a law.

46 (2)~~(1)~~ A person who uses or threatens to use force as
47 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
48 in such conduct and is immune from criminal prosecution and
49 civil action for the use or threatened use of such force by the
50 person, personal representative, or heirs of the person against
51 whom the force was used or threatened, unless the person against
52 whom force was used or threatened is a law enforcement officer,
53 as defined in s. 943.10(14), who was acting in the performance
54 of his or her official duties and the officer identified himself
55 or herself in accordance with any applicable law or the person
56 using or threatening to use force knew or reasonably should have
57 known that the person was a law enforcement officer. As used in
58 this subsection, the term "criminal prosecution" includes

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59 arresting, detaining in custody, and charging or prosecuting the
60 defendant.

61 ~~(3)(2)~~ A law enforcement agency may use standard procedures
62 for investigating the use or threatened use of force as
63 described in subsection ~~(2)(1)~~, but the agency may not arrest
64 the person for using or threatening to use force unless it
65 determines that there is probable cause that the force that was
66 used or threatened was unlawful.

67 ~~(4)(3)~~ The court shall award reasonable attorney ~~attorney's~~
68 fees, court costs, compensation for loss of income, and all
69 expenses incurred by the defendant in defense of any civil
70 action brought by a plaintiff if the court finds that the
71 defendant is immune from prosecution as provided in subsection
72 ~~(2)(1)~~.

73 (5) Once a prima facie claim of self-defense immunity from
74 criminal prosecution has been raised, the burden of proof shall
75 be on the party seeking to overcome the immunity from criminal
76 prosecution provided in subsection (2).

77 Section 2. The Division of Law Revision and Information is
78 directed to replace the phrase "this act" wherever it occurs in
79 the amendments to s. 776.032, Florida Statutes, made by this
80 act, with the chapter law number of this act, if it becomes a
81 law.

82 Section 3. Section 939.061, Florida Statutes, is created to
83 read:

84 939.061 Motion to dismiss; costs.-

85 (1) If a defendant files a motion to dismiss claiming
86 immunity from criminal prosecution under s. 776.032 and the
87 court grants the motion, the defendant shall be reimbursed for

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88 court costs, reasonable private attorney fees, and related
89 expenses incurred in defending the criminal prosecution, up to
90 the limit specified in subsection (4).

91 (2) To receive reimbursement under this section, a
92 defendant must submit a written request for reimbursement to the
93 Justice Administrative Commission within 6 months after the
94 issuance of the order granting the motion to dismiss. The
95 defendant must include with the reimbursement request an order
96 from the court granting the motion to dismiss and documentation
97 of any court costs or private attorney fees and related expenses
98 paid or owed.

99 (3) The Justice Administrative Commission shall review each
100 request and make a determination within 30 days after receiving
101 the request. If the requested court costs are supported by valid
102 documentation and the requested private attorney fees and
103 related expenses are reasonable and supported by valid
104 documentation, the commission must approve the reimbursement
105 request. Approved reimbursement requests must be paid to the
106 defendant from the operating trust fund of the state attorney
107 who prosecuted the defendant within 60 days after receipt of the
108 approved reimbursement request.

109 (4) A reimbursement request under this section may not
110 exceed \$200,000.

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