

HB 169

2016

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

27 to read:

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

30 (1) The Legislature finds that imposing the burden of
31 proof on a person who uses or threatens to use defensive force
32 as 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 immunity at a pretrial evidentiary hearing in order
38 to disprove a prima facie claim of self-defense immunity. The
39 Legislature has never intended that a person who acts in defense
40 of self, others, or property be denied immunity and subjected to
41 trial when that person would be entitled to acquittal at trial.
42 The amendments to this section made by this act are intended to
43 correct misinterpretations of legislative intent made by the
44 courts and shall apply retroactively to proceedings pending at
45 the time 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
 59 arresting, detaining in custody, and charging or prosecuting the
 60 defendant.

61 (3)~~(2)~~ A law enforcement agency may use standard
 62 procedures for investigating the use or threatened use of force
 63 as 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
 68 ~~attorney's~~ fees, court costs, compensation for loss of income,
 69 and all expenses incurred by the defendant in defense of any
 70 civil 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
83 to 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
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
100 each request and make a determination within 30 days after
101 receiving the request. If the requested court costs are
102 supported by valid documentation and the requested private
103 attorney fees and related expenses are reasonable and supported
104 by valid documentation, the commission shall approve the

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105 reimbursement request. Approved reimbursement requests shall be
106 paid to the defendant from the operating trust fund of the state
107 attorney who prosecuted the defendant within 60 days after
108 receipt of the 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.