

STORAGE NAME: h1121.in.doc
DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1121
RELATING TO: Workers' Compensation
SPONSOR(S): Representative Pickens
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE
 - (2) STATE ADMINISTRATION
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
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I. SUMMARY:

The Workers' Compensation Law requires employers, both public and private, to provide workers' compensation benefits "if the employee suffers an accidental injury or death arising out of work performed in the course and the scope of employment."

Since law enforcement officers are generally required to be "on duty" 24-hours a day, they benefit from an exception that provides workers' compensation for accidental injuries that occur at times when they are not working a scheduled shift (i.e., the accidental injury would not otherwise be within the course and scope of their employment). A law enforcement officer who is accidentally injured while discharging their primary responsibilities of detecting crime and enforcing laws, under circumstances reasonably consistent with those responsibilities, is deemed to be acting within the course and scope of their employment (i.e., the accidental injury is compensable), provided that the officer was not working for pay at a second job. There is no comparable exception for firefighters.

The bill would provide an exception for firefighters that is similar to that provided to law enforcement officers. Accidental injuries to firefighters that occur while off-duty would be compensable if the firefighter is protecting life and property in this state while fighting a fire in an emergency. These injuries would not be compensable if the firefighter is doing this for pay at a second job.

The bill would state that firefighters protect the public safety and that provision of workers' compensation coverage in these situations fulfills an important state interest.

The bill would have no fiscal impact on state government. The fiscal impact on local governments is dependent on the frequency of claims and, therefore, increased workers' compensation premiums, under the proposed exception.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill would require state and local governments to provide workers' compensation benefits to firefighters who are injured in accidents that are not currently compensable.

2. Lower Taxes Yes No N/A
3. Individual Freedom Yes No N/A
4. Personal Responsibility Yes No N/A
5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Compensable Injuries

The Workers' Compensation Law requires employers, both public and private, to provide workers' compensation benefits "if the employee suffers an accidental injury or death arising out of work performed in the course and the scope of employment."¹ "The course and the scope of employment" is not defined by statute. The First District Court of Appeals has applied this term as follows:

for an injury to arise out of and in the course of one's employment, there must be some causal connection between the injury and the employment or it must have had its origin in some risk incidental to or connected with the employment or that it flowed from it as a natural consequence. Another definition widely approved is that the injury must occur within the period of the employment, at a place where the employee may reasonably be, and while he is reasonably fulfilling the duties of his employment or engaged in doing something incidental to it.²

Exception for Law Enforcement

Since law enforcement officers generally are required to be "on duty" 24-hours a day, they benefit from an exception that provides workers' compensation for accidental injuries that occur at times when they are not working a scheduled shift (i.e., the accidental injury would not otherwise be within the course and scope of their employment).³ A law enforcement officer⁴ who is accidentally injured while discharging their primary responsibilities of detecting crime and enforcing laws, under circumstances reasonably consistent with those responsibilities, is deemed to be acting within the

¹ S. 440.09(1), F.S.

² Hill v. Gregg, Gibson & Gregg, Inc., 260 So.2d 193, 195 (Fla.1972) (quoting Fidelity & Casualty Co. of New York v. Moore, 143 Fla. 103, 196 So. 495, 496 (1940)).

³ S. 440.091, F.S.

⁴ For the purposes of s. 440.091, F.S., a law enforcement officer is one "elected, appointed, or employed full time by a municipality, the state, or any political subdivision and is vested with authority to bear arms and make arrests and the employee's primary responsibility is the prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state."

course and scope of their employment (i.e., the accidental injury is compensable), provided that the officer was not working for pay at a second job.

Firefighters

According to the Division of State Fire Marshal within the Department of Insurance, as of February 2002, 20,050 certified firefighters are currently working for pay. State government employs fewer than 1,000 certified firefighters. Local government employs the vast majority of the remaining firefighters.

The Workers' Compensation Law⁵ does not contain an exception for off-duty professional firefighters comparable to the exception applicable to the law enforcement officer injured in the course and scope of employment. Volunteer firefighters currently receive benefits for compensable injuries that occur when they are "responding to or assisting with fire or medical emergencies whether or not the firefighters are on duty."⁶ Disability to any state, municipal, county, port authority, special tax district, or fire control district firefighter due to tuberculosis, heart disease, or hypertension is presumed to be a compensable injury.⁷ A similar presumption exists for "emergency rescue or public safety workers,"⁸ including firefighters, who are exposed to certain communicable diseases.⁹

"Firefighter" is not defined for the purposes of workers' compensation coverage; rather, they are within the general definition of "employee." However, for the purposes of public employee death benefits, "firefighter" means "any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified pursuant to s. 633.35, [F.S.] and who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter."¹⁰

C. EFFECT OF PROPOSED CHANGES:

Accidental injuries to firefighters that occur while off-duty would be compensable if the firefighter is protecting life and property in this state while fighting a fire in an emergency. These injuries would not be compensable if the firefighter is doing this for pay at a second job. This bill would extend to firefighters, as defined for the purposes of public employee death benefits, an exception similar to that provided to law enforcement officers.

The bill would state that firefighters protect the public safety and that provision of workers' compensation coverage in these situations fulfills an important state interest.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

⁵ Ch. 440, F.S.

⁶ S. 440.02(16)(b)3., F.S.

⁷ S. 112.18, F.S.

⁸ S. 112.181, F.S., defines "emergency rescue or public safety worker" as "any person employed full time by the state or any political subdivision of the state as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety worker" does not include any person employed by a public hospital licensed under chapter 395 or any person employed by a subsidiary thereof."

⁹ S. 112.181, F.S.

¹⁰ S. 112.191(1)(b), F.S.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The number of additional claims and resulting increase in premiums is indeterminate. The actual incidence of these types of accidental injuries to firefighters is unknown. Similarly, any offset to increased workers' compensation costs due to decreased utilization of health insurance benefits is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

According to the Department of Insurance, the bill would have no fiscal impact on state government since the firefighters employed by the state have statewide jurisdiction and therefore would be acting within the course and scope of their employment whenever they are accidentally injured while fighting a fire in an emergency within the state.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

As noted above, the bill could result in a city or county having to spend funds if an increased number of workers' compensation claims results in higher premiums. The amount, however, is indeterminate due to data limitations. Unless the impact exceeds \$1.6 million, the exemption for insignificant fiscal impact contained in Article VII, Section 18 of the Constitution would apply. In addition, because the bill applies to all similarly situated employees in governmental units other than cities and counties, if the Legislature determines an important state interest, the bill would meet the exception to the mandates provisions of Article VII, Section 18 of the Florida Constitution. The bill contains a statement of important state interest for this purpose.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Eric Lloyd

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