

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 212

INTRODUCER: Criminal Justice Committee and Senator Oelrich

SUBJECT: Claims/Law Enforcement & Correctional Officers

DATE: March 4, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.			CA	
3.			BI	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

When certain Special Risk Class employees become disabled or die from tuberculosis, heart disease, or hypertension, the disability or death is presumed to have occurred accidentally and in the line of duty. This presumption applies both to worker's compensation claims under Chapter 440 of the Florida Statutes and claims for disability retirement or death under the Florida Retirement System (FRS). The bill provides that a law enforcement officer, correctional officer, or correctional probation officer loses this presumption for purposes of a worker's compensation claim if his or her condition was significantly aggravated by departing in a material fashion from the course of treatment prescribed by his or her personal physician. In addition, for such cases the bill creates a presumption that the disability or death was not caused by a condition incurred in the line of duty.

The bill also provides that the presumption that a disability was incurred in the line of duty is lost if the employee does not make a claim for benefits before leaving employment.

This bill substantially amends section 112.18 of the Florida Statutes.

II. Present Situation:

Special Risk Class

The Florida Retirement System (FRS) Pension Plan had 668,416 active members on June 30, 2009. Of these members, 75,640 (11.32%) were in the Special Risk Class.¹ The Special Risk Class includes employees who meet the eligibility requirements found in s. 121.0515, F.S., and who are employed by an FRS employer as a law enforcement officer, firefighter, correctional officer, correctional probation officer, emergency medical technician, paramedic, youth custody officer, or who are in a specified professional health care or forensic position and spend at least 75 percent of their time performing duties involving inmate contact for the Department of Corrections or patient contact for the Department of Children and Family Services.

The Special Risk Class was created in recognition that certain types of employment require physical and mental skills that can deteriorate with aging. Because of this, Special Risk Class members receive more credit toward retirement for each year of service and are eligible to retire at an earlier age than Regular Class members.² This was designed to ensure that members could retire without suffering a financial penalty before diminishing skills pose a risk of harm to themselves or the public.

Florida Retirement System Disability Benefits

All FRS members are entitled to disability benefits if they become permanently and totally disabled from performing useful employment. The level of the benefit depends upon whether the injury or illness that caused the disability was incurred in the line of duty and, if it was, the disabled member's membership class. Eligibility for disability benefits resulting from a disability that is not job related is the same for all membership classes: the member must have served at least eight years before becoming disabled, and the minimum benefit is 25 percent of the member's Average Final Compensation (AFC) at the time of disability retirement. On the other hand, there is no minimum time in service requirement to receive benefits for a disability that was incurred in the line of duty. However, the minimum in-line-of-duty disability benefit is 65 percent of the AFC for a Special Risk Class member and 42 percent of the AFC for a member of any other class.

In order to receive disability benefits, the member has the burden of proving that he or she is "totally and permanently disabled" and that the disabling injury or illness prevents him or her from "performing useful and efficient service as an officer or employee." Proof of disability must be certified by two Florida-licensed physicians.³

Florida Retirement System Death Benefits

Death benefits are available to certain survivors of FRS members. A death benefit equal to at least half of the member's last monthly salary is available for deaths incurred in the line of duty

¹ Department of Management Services Analysis of Senate Bill 212, p. 1.

² A Special Risk Class member can retire at age 55 or after 25 years of service, while a Regular Class member can retire at age 62 or after 30 years of service. Also, Special Risk Class members earn retirement credit at 3% of Average Final Compensation (AFC) for each year of service, while Regular Class members earn retirement credit at 1.6-1.68% of AFC per year.

³ Section 121.091(4), F.S.

even from the first day of employment. Death benefits for non-line-of-duty deaths are determined in a different manner and are dependent upon the length of service.⁴

In Line of Duty Determination

In order to receive in-line-of-duty benefits for a disability, in most cases there must be competent medical evidence documenting that the disability was caused by a job-related illness or accident.⁵ However, s. 112.18, F.S., provides a special presumption regarding the disability or death of a firefighter, law enforcement officer, or correctional officer that is caused by tuberculosis, heart disease, or hypertension. In such cases, it is presumed that the cause of the death or disability was accidental and that it was suffered in the line of duty unless the contrary is shown by competent evidence. This presumption applies to disability determinations under all public retirement systems, including the FRS and the Worker's Compensation Law.⁶

The presumption in s. 112.18, F.S., can only be applied if the firefighter, law enforcement officer, correctional officer, or correctional probation officer passed a physical examination upon entering into service that did not reveal any evidence of tuberculosis, heart disease, or hypertension.⁷

The Department of Management Services applies the in-line-of-duty presumption to state correctional probation officers even though they are not specified in s. 112.18, F.S. This interpretation is based upon an interpretation that the Legislature intended to include correctional probation officers when the presumption was expanded to include "state law enforcement officers" in 1999.⁸ Two other factors support this interpretation: (1) although "correctional probation officer" is not explicitly mentioned, the language in s. 112.18, F.S., creating the presumption specifically refers to the subsection that defines the term, and (2) correctional probation officers are specifically included in s. 943.13(6), F.S., with reference to the lack of eligibility for the presumption if the required physical examination prior to entering service reveals evidence of tuberculosis, heart disease, or hypertension.

Worker's Compensation

Any person or entity defined as an employer by ch. 440, F.S., including the state and its subdivisions, is required to provide workers' compensation coverage to its employees. An employer must pay compensation or furnish benefits to an employee who suffers an accidental compensable injury or death arising out of work performed in the course and the scope of

⁴In addition to the death benefits that are available for any member, the survivors of certain members may be entitled to additional death benefits depending upon the member's employment position and the circumstances of his or her death.

⁵ Section 121.091(4)(c)3, F.S. (FRS disability) and ss. 440.09 and 440.15, F.S. (worker's compensation disability).

⁶ Sections 185.34 and 175.231, F.S., establish similar presumptions for municipal police officers' pension systems and municipal firefighters' pension systems. Section 112.181, F.S., establishes a similar presumption for firefighters, paramedics, emergency medical technicians, law enforcement officers, and correctional officers who are disabled or die as a result of contracting hepatitis, meningococcal meningitis, or tuberculosis.

⁷ This requirement is found in s. 112.18, F.S., for firefighters and law enforcement officers (which has been interpreted by the Department of Management Services to include correctional officers and state correctional probation officers). It is also found in s. 943.13(6), F.S., which states that the in-line-of-duty presumption in s. 112.18, F.S., is not available to law enforcement officers, correctional officers, or correctional probation officers unless the physical examination that is required prior to entering service did not reveal any evidence of tuberculosis, heart disease, or hypertension.

⁸ Department of Management Services Analysis of Senate Bill 212, pp. 4 and 7.

employment.⁹ Unlike disability retirement under the FRS, an employee can receive worker's compensation disability benefits for partial or temporary disabilities.

III. Effect of Proposed Changes:

This bill provides criteria under which a law enforcement officer, correctional officer, or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension loses the current presumption that the condition was incurred in the line of duty for purposes of a claim for worker's compensation benefits. Satisfaction of the criteria results in a presumption that the officer's condition was not incurred in the line of duty. This reversal of the presumption occurs for any worker's compensation claim occurring on or after July 1, 2010 if:

- (1) The officer departed in a material fashion from a physician's prescribed course of treatment. "Prescribed course of treatment" is defined to mean prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician's medical records;
- (2) The departure from the prescribed course of treatment is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; and
- (3) The physician who prescribed the course of treatment was the officer's personal physician or, if the officer had previously been compensated for tuberculosis, heart disease, or hypertension under s. 112.18, F.S., and the worker's compensation statute, was an authorized physician for the preexisting workers' compensation claim.

Although it is not specified in the bill, it appears that the employer would bear the burden of proving that the condition should be presumed not to have been incurred in the line of duty.

There is a significant difference between application of the current presumption and the contrary presumption in the bill. The employer can overturn the current presumption that a qualifying condition was incurred in the line of duty by presenting competent evidence to the contrary.¹⁰ However, the bill does not include a provision by which the employee can overcome the presumption to the contrary.

In addition to specifying criteria for the presumption that a qualifying condition was not in the line of duty, the bill also provides that the employee loses the current in line of duty presumption if a claim for benefits is not made prior to leaving employment. It appears that this is intended to apply only to worker's compensation claims, but it could be interpreted to apply to FRS disability retirement claims as well. If so interpreted, there is also an ambiguity as to whether filing of a worker's compensation claim before leaving employment would satisfy this requirement for an FRS disability retirement claim that is filed after leaving employment. In either case, loss of the positive presumption would not preclude the employee from attempting to prove that his or her accident or injury was incurred in the line of duty unless the bill's contrary presumption applies.

⁹ Section 440.09(1), F.S.

¹⁰ Section 112.18(1)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Management Service has provided an Actuarial Statement of Fiscal Soundness stating that the bill complies with the requirements of Article X, Section 14 of the Florida Constitution and with the provisions of ch. 112, Part VII, F.S.¹¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In general, the bill would have a negative financial impact on employees whose actions result in loss of the current presumption by either failing to follow a prescribed course of treatment or failing to file a claim before leaving employment. It can also be expected to generate litigation over whether an employee's actions result in loss of the presumption. However, these effects are not quantifiable and the Department of Financial Services assesses that the impact of the bill on the private sector is unknown.

C. Government Sector Impact:

The Department of Financial Services indicates that the bill would have a minimal positive impact on the government sector. It estimates that less than 5 percent of the 832 claims paid since January 1, 2006, as a result of the current presumption would not have been compensable under the provisions of the bill.

VI. Technical Deficiencies:

Lines 82-85 provide that the employee loses the current in line of duty presumption if a claim for benefits is not made prior to leaving employment. It appears that this is intended to apply only to

¹¹ Department of Management Services Analysis of Senate Bill 212, p. 8.

worker's compensation claims, but it could be interpreted to apply to FRS disability retirement claims as well.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 4, 2010:

Clarifies that the new presumption that a condition was not incurred in the line of duty applies only to worker's compensation claims under ch. 440, F.S.

- B. **Amendments:**

None.