

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 Policy and Steering Committee on Ways and Means

BILL: CS/CS/CS/SB 212

INTRODUCER: Policy and Steering Committee on Ways and Means; Banking and Insurance Committee, Criminal Justice Committee and Senator Oelrich

SUBJECT: Claims/Law Enforcement & Correctional Officers

DATE: April 20, 2010 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Clodfelter	Cannon	CJ	Fav/CS
2. Gizzi	Yeatman	CA	Favorable
3. Johnson	Burgess	BI	Fav/CS
4. Frederick	Coburn	WPSC	Fav/CS
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Current law establishes a presumption for state and local firefighters and law enforcement, and correctional and correctional probation officers regarding determinations of employment related disability. It provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer, the burden of proving by competent evidence that the disabling disease resulted from the person's employment.

The bill provides that a law enforcement officer, correctional officer, or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and departs from the prescribed course of treatment of his or her physician, and the departure is demonstrated to result in an aggravation of his or her condition, would lose a specified presumption for claims after July 1, 2010. The bill also specifies that only retirement coverage under claims made prior to leaving employment are eligible for a specified presumption. These provisions would not apply to state or local firefighters.

Finally the bill provides a broader interpretation of workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer. However, the bill authorizes a sheriff to recover from a private or public employer any increase in the sheriff's workers' compensation expenses that result directly from off-duty employment of a deputy sheriff.

This bill substantially amends the following section of the Florida Statutes: 30.2905 and 112.18.

II. Present Situation:

Florida Retirement System (FRS)

The active membership of the FRS Pension Plan, as of June 30, 2009, is divided into five membership classes: The Regular Class has 582,671 members; the Special Risk Class has 75,640 members, the Special Risk Administrative Support Class has 76 members, the Elected Officers' Class has 2,304 members, and the Senior Management Service Class has 7,725 members.¹

Special Risk Class

The Special Risk Class of the Florida Retirement System consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

The Special Risk Class was created for employees who must, as an essential function of the position, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. As persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their co-workers. A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 vs. age 62) or with fewer years of service (25 years vs. 30 years) than a Regular Class member.

Florida Retirement System Disability Benefits

All FRS members are entitled to disability benefits if they become permanently and totally disabled from performing useful employment.² The level of the benefit depends upon whether the injury or illness that caused the disability was employment related and the employee's membership class. Eligibility for disability benefits resulting from a disability that is not employment related is the same for all membership classes: the member must have served at least 8 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. However, there is no minimum time in service requirement to receive benefits for a disability that was incurred in the line of duty. 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

¹ Department of Management Services, *CS/SB 212 Analysis*, March 30, 2010 (on file with the Senate Committee on Banking and Insurance).

² Section 121.091(4), F.S.

from “performing useful and efficient service as an officer or employee.” Proof of disability must be certified by two Florida-licensed physicians.

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 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.³

In Line of Duty Determination

In most cases, in order to receive in-line-of-duty benefits for a disability there must be competent medical evidence documenting that the disability was caused by a job-related illness or accident.⁴ 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 is applicable to disability determinations under all public retirement systems, including the FRS and the Workers’ Compensation Law.⁵

Under current law, 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.⁶

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 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 1999.⁷ 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

³ In addition to death benefits available for members, the survivors of certain members may also be entitled to additional death benefits based upon the member’s employment position and the circumstances of his or her death.

⁴ See s. 121.091 (4)(c)3., F.S. (addressing FRS disability) and ss. 440.09 and 440.15, F.S. (addressing workers’ compensation disability).

⁵ Sections 185.34 and 175.231, F.S., provide similar presumptions for both municipal police officers’ and municipal firefighters’ pension plans. Section 112.181, F.S., establishes a similar presumption for firefighters, paramedics, emergency medical technicians, law enforcement officers, and correctional officers who die or become disabled as a result of contracting hepatitis, meningococcal meningitis, or tuberculosis.

⁶ This requirement is established in s. 112.18, F.S., for firefighters and law enforcement officers (the Department of Management Services has also interpreted this statute to include correctional officers and state correctional probation officers). This requirement is also found in s. 943.13(6), F.S., which provides that the “in-line-of-duty” presumption located in s. 112.18, F.S., does not apply to law enforcement officers, correctional officers, or correctional probation officers, unless their required physical examination prior to entering service did not reveal any evidence of tuberculosis, heart disease, or hypertension.

⁷ Department of Management Services *Senate Bill 212 Analysis*, Feb. 5, 2010 (on file with the Senate Committee on Community Affairs).

required physical examination prior to entering service reveals evidence of tuberculosis, heart disease, or hypertension.

Workers' Compensation

Any person 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.⁸ 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 employment.⁹ Unlike disability retirement under the FRS, an employee can receive compensation payments for partial or temporary disabilities.

III. Effect of Proposed Changes:

Section 1 amends s. 30.2905, F.S., to provide that the term "enforcing the criminal, traffic, or penal laws of this state" would include, but is not limited to providing security, patrol, or traffic direction for a private employer. This change will provide a broader interpretation of workers' compensation benefits payable to deputy sheriffs engaging in off-duty security services. The bill authorizes a sheriff to recover from a private or public employer of a deputy sheriff, who is regarded as working off-duty, any increase in the sheriff's workers' compensation expenses that result directly from the off-duty employment.

Section 2 amends s. 112.18, F.S., to provide criteria under which a law enforcement officer, correctional officer, or correctional probation officer, defined under s. 943.10, F.S., who suffers from tuberculosis, heart disease, or hypertension would lose the current presumption that the condition was incurred in the line of duty for purposes of a claim for workers' compensation benefits. Satisfaction of the criteria would result in a presumption that the officer's condition was not incurred in the line of duty. This applies to any workers' compensation claim filed under s. 112.18, F.S., or ch. 440, F.S., occurring on or after July 1, 2010, if:

1. The officer departed in a material fashion from his or her personal 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. An officer who has previously been compensated for tuberculosis, heart disease, or hypertension under s. 112.18, F.S., or ch. 440, F.S., and is reporting a new workers' compensation claim, departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the condition resulting in disability or increasing the disability or need for medical treatment.

The bill provides for independent medical examinations pursuant to s. 440.13(5), F.S., in situations in which there is a dispute as to the appropriateness of the course of treatment

⁸ Sections 440.03 and 440.09, F.S.

⁹ Section 440.09 (1), F.S.

prescribed by a physician or an authorized physician for preexisting workers' compensation claims; or if there is a dispute as to whether a material departure from a prescribed course of treatment significantly aggravated the condition or resulted in disability, increasing disability, or need for medical treatment.

There is a significant difference between application of the current presumption and the contrary presumption in the bill. Under the current presumption, the employer can overturn the 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 that is established in the bill.

In addition, 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.

This bill takes effect July 1, 2010.

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 Services states that the bill complies with Article X, s. 14 of the State Constitution, and Part VII, of ch. 112, F.S., which require public retirement benefits to be funded on a sound actuarial basis.¹¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁰ Section 112.18 (1)(a), F.S.

¹¹ Department of Management Services *Senate Bill 212 Analysis*, March 30, 2010 (on file with the Senate Committee on Banking and Insurance).

B. Private Sector Impact:

The bill would have a negative financial impact on public 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.

C. Government Sector Impact:

The National Council on Compensation Insurance (NCCI) estimates that the bill would result in a negligible impact on total statewide workers' compensation system costs.¹² The NCCI estimates that the bill would result in a minimal impact on those classes applicable to law enforcement officers, correctional officers, and correctional probation officers. The NCCI provided the following comments:

- Currently, the medical conditions specified in the bill are presumed to be accidental and to have been suffered in the line of duty for certain first responders unless competent evidence to the contrary can be shown. Under the bill, with the exception of firefighters, the work-related presumption would not apply when the employee “departed in a material fashion from the prescribed course of treatment”. It may be difficult and costly to attempt to prove that an employee departed from a prescribed course of treatment. For example it would be difficult to determine if an employee is actually taking prescribed medication or complying with recommended diet and exercise. Further, there is uncertainty as to how the Judges of Compensation Claims (JCC) will view the evidence and determine whether a “material departure” has occurred in order to rule in such cases under ch. 440, F.S.
- The bill also requires that, with the exception of firefighters, a claim be filed prior to leaving employment in order for the presumption of compensability to apply. As a result of this provision, NCCI estimates that if enacted, the bill could result in a minimal amount of savings in those classes applicable to law enforcement officers, correctional officers and correctional probation officers.

The Division of Risk Management within the Department of Financial Services (DFS) indicates that this bill would have a minimal positive impact on state government by reducing program claim costs by an estimated \$150,000 per year. DFS estimates that less than five percent of the 832 workers' compensation claims paid since January 1, 2006, as a result of the current presumption would not have been compensable under the provisions of this bill.¹³

VI. Technical Deficiencies:

The bill requires the member to apply for disability prior to terminating employment, otherwise he or she is not eligible for disability benefits under the presumption provisions of this bill. It appears that this requirement is intended to apply only to workers' compensation claims, but it

¹² The National Council on Compensation Insurance, Inc., *Analysis of Florida House Bill 123*, November 23, 2009 (on file with the Senate Committee on Banking and Insurance).

¹³ Department of Financial Services, *Senate Bill 212 Analysis* (Jan. 13, 2010) (on file with the Senate Committee on Community Affairs).

can also be interpreted to apply to FRS disability retirement claims as well. If so interpreted, there is also ambiguity as to whether filing a workers' compensation claim before leaving employment would satisfy this requirement for an FRS disability retirement claim that is filed after leaving employment.

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 Policy and Steering Committee on Ways and Means on April 20, 2010:

Clarifies the term “enforcing the criminal, traffic, or penal laws of this state” to provide a broader interpretation of the provisions related to the compensability for workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer.

CS by Banking and Insurance Committee on April 13, 2010:

Provides a broader interpretation of provisions relating to compensability for workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer. The CS authorizes a sheriff to recoup from a private or public employer any increase in the sheriff's workers' compensation expenses that result from any such off-duty employment.

CS by Criminal Justice Committee on March 4, 2010:

Clarifies that the new presumption in paragraph (b) 1, lines 41-66, of the bill providing that a condition was not incurred in the line of duty, only applies to workers' compensation claims under ch. 440, F.S.

B. Amendments:

None.