

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1455

RELATING TO: Prison Inmates

SPONSOR(S): Committee on Children and Family Empowerment and Representative Harrington

COMPANION BILL(S): SB 730 [Similar]

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

- (1) Children and Family Empowerment [6 YEAS 0 NAYS]
 - (2) CORRECTIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under current state law, employees injured on the job may not receive workers' compensation benefit payments while incarcerated in a public institution, unless they have persons dependent upon them for support. In that case, compensation may be paid to the dependents, as if the claimant were deceased, for the period of time incarcerated.

CS/HB 1455 will allow the state to be reimbursed from an inmate's workers' compensation benefits for medical treatment related to an injury received prior to the inmate's incarceration. The committee substitute exempts workers' compensation benefits provided in conjunction with the institutional Prison Industry Enhancement (PIE) work programs from the reimbursement requirements.

The bill also creates specific requirements that temporary cash assistance and other WAGES services, food stamp benefits, and Medicaid services be terminated for any person who becomes an inmate in a correctional institution.

The fiscal impact of this committee substitute is indeterminable.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

WORKERS' COMPENSATION

Under the Workers' Compensation system, employers agree to pay a portion of lost wages and medical expenses for an employee injured on the job, regardless of fault. In exchange, the employee gives up their common law right to sue for damages. Courts have stated that the Florida system was designed to protect workers *and their dependents* from the hardships that arise from an injury or death in the course of employment. See Cramer v. State of Fla., 885 F.Supp. 1545 (M.D.Fla.1995); Lee Eng'g & Constr. Co. v. Fellows, 209 So.2d 454 (Fla. 1968). Employers typically secure workers' compensation coverage from insurance companies, self-insurance funds, or are self insured.

Under current law, if an individual receiving workers' compensation benefits subsequently becomes an inmate, the benefits are not payable to the inmate for the period of incarceration. §440.15(9), F.S. However, if the inmate has dependents¹, such as a spouse or children, the statute requires that the benefits be paid to the dependents in the manner in which they would be paid if the inmate were deceased. Furthermore, such dependents are to continue receiving the benefits for the period that the claimant remains an "inmate."

No formal mechanism currently exists to notify the Department of Corrections (DOC) when incoming inmates are receiving workers' compensation benefits. Neither the DOC nor the Department of Labor and Employment Security (DLES) is currently required to verify whether inmates are receiving workers' compensation benefits. Instead, the DOC relies on the statements of inmates themselves. Additionally, the DOC may discover the existence of payments to inmates when checks are received in the mail at the institution, as all mail addressed to inmates is inspected by staff. Because inmates are not allowed to receive cash or checks, any checks that are found by the mail room staff are mailed back to issuing institution with a note stating the correctional institution cannot receive checks for inmates.

The Committee on Children and Family Empowerment staff contacted eleven of the largest workers' compensation insurance carriers, as identified by the DLES, regarding identification of inmate claimants. Based on the information provided, it appears that neither the DLES nor the insurance companies currently have a reliable method of

¹ The statute provides that, "dependency shall be determined as if the employee were deceased and to whom compensation would be paid in case of death." "Dependent" is not specifically defined in the Workers' Compensation Act. The courts, however, provide some direction. In General Electric vs. DeCubas, 504 So.2nd. 1276 (Fla. 1st DCA 1986), the district court of appeal held the burden of proof of dependency lies with the claimant. The court stated the claimant must meet three requirements: (1) the claimant was dependent upon the deceased for support, (2) the claimant received substantial support from the deceased, and (3) the deceased provided such support regularly with the reasonable expectation that the deceased would have provided it in the future. *NOTE: 440.15 (9), F.S., inaccurately specifies the definition of dependency is defined "elsewhere in this chapter."*

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 3

identifying whether a claimant is incarcerated. The following experiences with notification of incarceration were mentioned by insurance companies:

- (1) The insurance company was told about the incarceration by:
 - (a) the claimant,
 - (b) the claimant's family member,
 - (c) the claimant's doctor, or
 - (d) the claimant's attorney.
- (2) The insurance company received a returned check from the correctional facility.
- (3) The incarceration was discovered during a periodic review. (Long term disability cases are periodically reviewed by some insurance companies. The review may involve a record's check and/or surveillance of the employee by an investigator.)
- (4) The insurance company became aware of the incarceration of claimant as a result of workers' compensation checks not being cashed.
- (5) Division of Workers' Compensation form 19 is mailed monthly to all recipients receiving temporary benefits requesting information regarding earnings. If this form is not returned or looks suspicious the insurance company may decide to do an investigation.
- (6) The incarceration was discovered after seeing an article in the newspaper.

All of the insurance companies surveyed stated they stop payments upon becoming aware of a claimant receiving benefits while incarcerated, provided the claimant has no dependents. The actual process used to transfer payments to such dependents is not clear. In some cases, the insurance company continues payments to the claimant but mails the payment to a different address. Other companies may mail the check to the claimant's attorney. In all instances the companies reported occurrences of workers' compensation payment to inmates as rare.

Federal and state law require that inmates employed in institutional Prison Industry Enhancement (PIE) programs be entitled to workers' compensation benefits for injuries sustained in the course of employment in the program, notwithstanding the provisions of §440.15(9), F.S.

PUBLIC ASSISTANCE

In general, eligibility for public assistance is determined by federal law. Federal regulations require that individuals receiving public assistance report changes in conditions that could affect eligibility. Federal law and regulations require states to establish a performance reporting system to monitor public assistance programs, including a quality control review process to help ensure that benefits are issued only to qualifying households and individuals and that the benefit amounts and payments are correct. State agencies are responsible for imposing penalties for violations of program requirements and for recovering overpayments.

Work and Gain Economic Self-sufficiency (WAGES) Program. Chapter 414 establishes the WAGES program which provides short-term cash assistance and services to families in need. Under the WAGES Act, adult recipients are required to work or engage in work activities as a condition of receiving benefits.

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 4

Food Stamp Benefits. The Florida Department of Children and Families administers the federal food stamp program. The program is primarily designed to increase the food purchasing power of eligible low-income households to a point where they can buy a nutritionally adequate low-cost diet. Benefits are available to nearly all households that meet Federal eligibility tests for limited monthly income and liquid assets, as long as certain household members fulfill work registration and, when imposed, employment and training program requirements.

Medicaid Benefits. Medicaid is the state and federal partnership that provides health coverage for selected categories of people with low incomes. Its stated purpose is to improve the health of people who might otherwise go without medical care. The Agency for Health Care Administration develops and carries out policies related to the Medicaid program. The Department of Children and Families Services, Economic Self Sufficiency Services Office determines Medicaid recipient eligibility.

Stop Inmate Fraud Program

Florida currently has no state laws that specifically prohibit the participation of inmates in public assistance programs like WAGES, Food Stamps, or Medicaid. However, under the Stop Inmate Fraud Program, the Division of Public Assistance Fraud of the Office of the Auditor General must establish procedures for sharing public records among social services agencies regarding the identities of persons incarcerated in state correctional institutions, or local government facilities, who are wrongfully receiving public assistance benefits or entitlement benefits. §414.40, F.S. Currently, the Division of Public Assistance Fraud conducts monthly data base searches of inmate populations and furnishes a list of "hits" to the Department of Children and Families to determine whether inmates are receiving public assistance benefits.

In addition, federal regulations and program policies generally prohibit inmates from receiving benefits under federally funded public assistance programs. See, e.g., 42 CFR Chapter IV, §435.1008 and §435.1009, 42 U.S.C. 1382(e).

Definition of inmate

The term "inmate" is not defined in s. 440.15(9), F.S., or in any other section of ch. 440, F.S. However, it is defined in other sections of statute. In those contexts, "inmate" generally refers to persons committed to the custody of the Department of Corrections (DOC) [see, for example, s. 945.42(6), F.S.]. This definition appears to exclude persons detained in county jails as a result of being charged with or convicted of a felony, or misdemeanor, who are defined in s. 951.23, F.S., as "county prisoners."

B. EFFECT OF PROPOSED CHANGE

The committee substitute will allow the state to be reimbursed from workers' compensation benefits for medical treatment rendered an inmate for an on-the-job injury. The committee substitute exempts workers' compensation benefits provided to inmates participating in institutional PIE work programs, as required under Federal PIE certification regulations.

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 5

The committee substitute requires that temporary cash assistance and other WAGES services, food stamp benefits, and Medicaid services be terminated when a beneficiary becomes an inmate in a correctional institution.

The committee substitute will be effective upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

a. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 6

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 7

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The changes could result in a reduced payment of workers' compensation benefits to be paid to an inmate's dependents while the inmate is incarcerated in a public institution.

The committee substitute would also require workers' compensation insurance providers to continue to pay a claimant's medical expenses while the claimant is incarcerated. Currently, if a claimant has no dependents, the provider is not required to pay any benefits for the period of incarceration.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

Yes. The bill could reduce an inmate's ability to provide support to the inmate's dependents through workers' compensation payments.

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 8

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 440.15(9), 414.905, 414.32, 409.903, 409.904 F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates paragraph (a) and (b) of subsection (9) of s. 440.15, F.S. Paragraph (a) allows the state to receive reimbursement from workers' compensation benefits provided to an inmate for medical treatment related to an injury occurring prior to the inmate's incarceration. Paragraph (b) exempts inmates that participate in PIE programs from the reimbursement requirements delineated in subsection (9).

Section 2. Creates paragraph (j) of subsection (15) of section 414.095, Florida Statutes, to terminate eligibility for receiving temporary cash assistance and services through the WAGES program upon becoming an inmate.

Section 3. Creates subsection (6) of section 414.32, Florida Statutes, to terminate eligibility for food stamp benefits upon becoming an inmate.

Section 4. Creates subsection (9) of section 409.903, Florida Statutes, to terminate eligibility for receiving payments for medical assistance and related services under Medicaid upon becoming an inmate.

Section 5. Creates subsection (6) of section 409.904, Florida Statutes, to terminate eligibility for receiving optional payments and related services under Medicaid upon becoming an inmate.

Section 6. Provides that the bill is effective upon becoming law.

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 9

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

The fiscal impacts of the committee substitute are currently indeterminable. However, dependents receiving a reduced benefit as a result of reimbursement to the state for medical treatment provided to an inmate may look to other state public assistance program for services. Additionally, preventing an inmate from receiving public assistance may reduce the cost to the state of operating public assistance programs.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 10

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

Although the fiscal impact of this committee substitute on the private sector is indeterminate, workers' compensation insurance providers will be required to continue to pay medical costs related to the on-the-job injury for claimant's without dependents who become incarcerated.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

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:

Section 440.15, regarding workers' compensation benefits upon incarceration, currently applies to inmates of a "public" institution. The section does not explicitly include private correctional facilities.

Although the bill provides for reimbursement of medical expenses, as currently drafted, the bill does not state where such collected expenses should be deposited. § 945.6037 currently requires that medical copayments be deposited in the General Revenue Fund.

STORAGE NAME: h1455s1a.cor

DATE: March 25, 1998

PAGE 11

The bill does not create a mechanism for alerting the Department of Corrections of the availability of workers' compensation benefits.

The language of the bill allows, but does not require, the Department of Corrections, or any other state entity, to seek reimbursement for medical treatment relating to an injury covered by workers' compensation benefits.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The CS/HB 1455 differs from the original bill [HB 1455] in the following manner:

- ▶ Removes provision that prohibited payment of workers' compensation benefits to be paid to an inmate's dependents while the inmate is incarcerated in a public institution.
- ▶ Adds provision that allows the state to receive reimbursement from workers' compensation benefits provide to an inmate for medical treatment relate to an injury received prior to the inmate's incarceration.
- ▶ Adds provision that exempts inmates that participate in correctional work programs from losing workers' compensation benefits.
- ▶ Clarified a provision that required all "public benefits" provided to a person be terminated immediately when that person becomes an inmate in any prison or other correctional institution.

The Corrections Committee adopted one amendment to CS/HB 1455. The amendment added language to require, rather than permit, the state to seek medical reimbursement.

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios

AS REVISED BY THE COMMITTEE ON CORRECTIONS:

Prepared by:

Legislative Research Director:

JENNY CONNER WOLFE

AMANDA CANNON