

STORAGE NAME: h0413.cor

DATE: April 9, 1997

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

BILL #: HB 413

RELATING TO: Worker's Compensation

SPONSOR(S): Representative Ogles

STATUTE(S) AFFECTED: ss. 39.05845, and 440.15, F.S.

COMPANION BILL(S): SB 1062 (s) and SB 688 (c)

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

(1) FINANCIAL SERVICES YEAS 6 NAYS 4

(2) CORRECTIONS

(3)

(4)

(5)

I. SUMMARY:

Under current state law, injured employees 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 supported by the inmate for the period of time incarcerated, and payments are calculated as if the employee were deceased.

The bill would eliminate the exception that allows payment of workers' compensation benefits to an employee incarcerated in a public institution if there are persons dependent upon the inmate for support. If the inmate is released, or the conviction is overturned on appeal, then payments to the inmate would be resumed for any remaining workers' compensation benefit payments.

The bill would clarify that restrictions on employment of juvenile delinquents, enacted in 1996, and referring to s. 440.15(9), are intended to reference subsection (9) as amended by the bill.

The fiscal impact on state agencies is indeterminable. There may be some fiscal impact on local governments if dependents who are no longer eligible for an inmate's workers' compensation benefits seek support from local government organizations. There may be a positive fiscal impact on workers' compensation carriers who may be paying out reduced benefits.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Workers' compensation benefits may not be paid to injured employees becoming incarcerated in a public institution during the period of incarceration. Benefit payments may only be made to persons dependent upon the inmate for support. Payments are calculated as if the inmate were deceased [s. 440.15(9), F.S.].

No formal mechanism exists to notify the DOC of the status of incoming inmates with respect to their receipt of workers' compensation benefits. The DOC relies on the statements of the inmates themselves.

Neither the DOC nor the Department of Labor and Employment Security (DLES) is required to validate the extent to which incarcerated employees are receiving workers' compensation benefits. As a result, neither the DOC, nor the worker's compensation insurer or the DLES, can determine definitively whether or not an inmate is receiving benefits.

According to the DLES, the circumstances contemplated in s. 440.15(9) are not encountered with great frequency. In part, this is due to the absence of a mechanism to track these injured employees and identify those who receive benefits while incarcerated. But, according to the DLES, it is also due to a belief that not many instances of inmates receiving benefits go undetected because of the nature of worker's compensation claims and vigilant claims monitoring by adjusters.

An informal canvassing of several insurers supports the DLES view. Insurers as a rule do not appear to have any procedures specifically designed to detect benefit payments to inmates, and report varying degrees of success in uncovering such payments. The most common way this situation is detected is when an employee fails to attend some proceeding or examination required to maintain the workers' compensation claim.

Two cases have been investigated by the DLES relating to this issue. In one case, the benefit payments began prior to 1989 when state law did not prohibit such payments. In the other case--post 1989--the DLES indicates that the benefits should have been terminated, and were terminated relatively soon after the employee became incarcerated.

The Chief Medical Officer of the DOC, who is responsible for medical care of inmates, indicates that efforts are made to coordinate medical care related to a employment-related injuries. Reimbursement for such care rendered during an inmate's confinement is requested from workers' compensation carriers.

Section 946.006(4), F.S., authorizes the employment of inmates in correctional work programs, known as Prison Industry Enhancement (PIE) programs. Federal and state law requires inmates employed in PIE programs to have entitlement to workers' compensation benefits as a result of injuries sustained in the course of employment in the programs, notwithstanding the provisions of s. 440.15(9), F.S.

In December, 1996, a telephone survey was conducted by the Division of Workers' Compensation within the Department of Labor and Employment Security to determine whether injured workers receiving workers' compensation benefits retain eligibility for those benefits if they are convicted of a crime and incarcerated. Forty-eight states provided information, with only Maryland and South Carolina not responding.

Results indicate that inmates are *ineligible* for workers' compensation benefits in 21 (43.7%) of the 48 responding states, and fully or partially *eligible* in the remaining 27 (56.3%). No state reported any legislative or administrative intent to change this aspect of workers' compensation policy.

Forty-three (91.5%) of the responding states do not maintain statistics on the number of inmates receiving workers' compensation benefits or the amount paid to them.

B. EFFECT OF PROPOSED CHANGES:

The bill would eliminate the exception that allows payment of workers' compensation benefits to an employee incarcerated in a public institution if there are persons dependent upon the inmate for support. If the inmate is released, or the conviction is overturned on appeal, then payments to the inmate would be resumed for any remaining worker's compensation benefit payments.

Further, restrictions on employment of juvenile delinquents, enacted in 1996, and referring to s. 440.15(9), would be clarified to reference subsection (9) as amended by the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. 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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

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?

Yes. Workers' compensation insurers will likely realize benefits because all correspondence and processing relating to the inmate's claim is suspended during incarceration.

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

No.

5. Family Empowerment:

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

Not applicable.

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

Not applicable.

- (2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

No.

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

No.

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

No.

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

Yes. It ends the payment of worker's compensation benefits to dependents of incarcerated employees.

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?

No.

(2) service providers?

Yes.

(3) government employees/agencies?

Yes.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends subsection (9) of s. 440.15, F.S., to eliminate payment of workers' compensation benefits to an employee who becomes incarcerated in a public institution on the basis that the inmate has persons dependent on him or her for their support. Dependents of inmates would no longer receive worker's compensation benefits based upon the inmates eligibility. Upon release, the bill restores the employee's payments, based on his or her eligibility as it exists at the time of release. Only if the conviction which led to incarceration is overturned on appeal, will the employee be able to recover the benefits withheld during incarceration.

Section 2. Reenacts subsection (3) in s. 39.05845, F.S. (1996 Supp.), with no amendments, in order to clarify that the cross reference to s. 440.15(9), F.S., therein is intended to refer to the statute as amended by the bill. The provisions in section 1, to provide workers' compensation coverage to juveniles participating in work programs, would apply to private sector employers.

Section 3. Provides that the bill is effective upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

According to the Department of Corrections, the impact of this bill is indeterminable since the department has no records concerning inmate eligibility for or receipt of workers' compensation payments.

2. Recurring Effects:

Indeterminable.

3. Long Run Effects Other Than Normal Growth:

Indeterminable.

4. Total Revenues and Expenditures:

Indeterminable. See III.A.1.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Dependents no longer eligible for support through worker's compensation benefits may look to local government organizations for health care or other services. Local governments now paying benefits for incarcerated employees might realize some indeterminate savings in workers' compensation premiums assuming there were large numbers of inmates receiving benefits.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Workers' compensation carriers will pay out reduced benefits and employers will be responsible for less risk as well as lower claims.

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

None.

D. FISCAL COMMENTS:

None.

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 spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

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

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

V. COMMENTS:

The term "inmate" is not defined in s. 440.15(9), F.S., or in any other section of Chapter 440, F.S. It is, however, defined in other statutory sections. In those contexts, "inmate" generally refers to persons committed to the custody of the Department of Corrections (DOC) [see, for example, s. 945.42(7), F.S.]. This appears to exclude persons incarcerated in county jails, who are defined in s. 951.23, F.S., as "county prisoners."

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The term "public institution" used in s. 440.15(9) also is not defined in Chapter 440, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

E. LEON JACOBS, JR.

STEPHEN HOGGE

AS REVISED BY THE COMMITTEE ON CORRECTIONS:

Prepared by:

Legislative Research Director:

Rhesa H. Rudolph

Amanda Cannon