

STORAGE NAME: h0215a.in

DATE: March 4, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 215

RELATING TO: Workers' Compensation

SPONSOR(S): Representative Fasano

COMPANION BILL(S):

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

- (1) INSURANCE YEAS 8 NAYS 0
 - (2) LAW ENFORCEMENT & CRIME PREVENTION
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Under current Florida law, workers' compensation only covers an employee's injury if the injury arises out of and occurs within the course and scope of employment. An employee is not considered to be acting within the course and scope of employment when "going to or coming from" work, unless engaged in a special errand or mission for the employer (this is known as the "going or coming" rule). Law enforcement officers now enjoy a limited exception to the "going or coming" rule when injured while carrying out their "primary responsibility" to prevent or detect crime or enforce the penal, criminal, traffic, or highway laws of the state. They are deemed by operation of s. 440.091, F.S., to have been injured within the course of employment, and therefore are covered by workers' compensation.

This bill broadens the circumstances in which law enforcement officers, correctional officers, and correctional probation officers are considered to be acting within the course and scope of employment and, accordingly, covered by workers' compensation by creating an additional statutory exception to the "going and coming" rule. The bill provides that:

- a law enforcement officer, correctional officer, or correctional probation officer
- going to or coming from work
- in an official law enforcement or corrections vehicle

is deemed to be engaged in a special errand or mission for the employer, such that injuries are covered by workers' compensation.

The bill is expected to have an impact on state and local governments of an indeterminate amount.

Amendment:

There is one amendment adopted by the Committee on Insurance traveling with the bill. The amendment narrows the definition of "officer" so that the bill applies only to law enforcement officers, and not correctional or correctional probation officers.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pursuant to chapter 440, the workers' compensation system provides indemnity and medical benefits to injured employees. In order for an employee to be entitled to workers' compensation benefits, the law requires that the injury "arise out of" and be in the course and scope of the employment.

"Arising Out Of" the Employment

According to s. 440.02(32), F.S., an injury is deemed to arise out of employment "if work performed in the course and scope of employment is the major contributing cause of the injury." Id. Much litigation in workers' compensation has been devoted to the issue of whether an injury arose out of and occurred in the course and scope of employment. The First District Court of Appeal stated that in order to establish that an accident arose out of, and occurred in the course and scope of, the employment, it is "sufficient for the claimant to prove that her injury occurred in the period of her employment, at a place where she would reasonably be, while fulfilling her duties." Hillsborough County School Board v. Williams, 565 So.2d 852, 853-54 (Fla. 1st DCA 1990)

Going and Coming Rule

According to Florida law, if an injury is suffered while going to or coming from work, the injury is not one which arises out of and in the course of employment. Section 440.092(2), F.S. However, if the employee was engaged in a "special errand or mission" for the employer while going to or coming from work, the injury is deemed to arise out of and in the course of employment.

Florida courts have stated that an employee is on a special errand if the journey was a substantial part of the service performed for the employer. D.C. Moore & Sons v. Wadkins, 568 So.2d 998 (Fla. 1st DCA 1990). Courts have held that an employee is on special errand where the employee is instructed by the employer to perform a special errand which grows out of and is incidental to his employment. Bruck v. Glen Johnson, Inc., 418 So.2d 1209, 1211 (Fla. 1st DCA 1982). A typical "special errand" exists when the employer calls the employee at home, and instructs him to deviate from his normal route into work to pick up an item needed for the purposes of employment that day. See Spartan Food Systems & Subsidiaries v. Hopkins, 525 So.2d 987 (Fla. 1st DCA 1988) (Employee directed to pick up drink cups on way into work).

When Law Enforcement Officers Are Within the Course of Employment

Section 440.091, F.S., is a special provision relating to officers vested with the authority to bear arms and make arrests, which sets forth the circumstances under which such officer is deemed to be in the course and scope of employment. This provision creates a limited exception to the "going and coming" rule for these officers. Pursuant to this section, if an employee:

- is elected, appointed, or employed full time by a municipality, the state, or any political subdivision, is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention or detection of crime or the enforcement of penal, traffic, or criminal laws of the state;
- was discharging that primary responsibility within the state; and
- was not engaged in services for a private employer;

the employee is deemed to have been acting in the course and scope of employment, regardless of whether he or she is going to or coming from work. If an officer meets these three criteria and is injured, he or she will be covered by workers' compensation.

Case Law Relating to Law Enforcement Officers

Cases construing s. 440.091, F.S., focus on whether the officer was discharging his or her "primary responsibility" at the time of the accident. See e.g., Palm Beach County Sheriff's Office v. Ginn, 570 So.2d 1059 (Fla. 1st DCA 1990) (although an officer is on call for duty and has police radio and other indicia of authority, these factors are not dispositive; the issue is whether the officer was carrying out his "primary responsibility").

In Hanstein v. City of Fort Lauderdale, 569 So.2d 493 (Fla. 1st DCA 1990), for example, a patrol officer was on his way to work in his personal vehicle when he observed a truck making an improper turn. The officer testified that he made a "conscious decision" to issue a citation for the violation, but before he could do so, his vehicle was struck by the truck. Because department policy prohibited an officer from issuing a citation for an accident in which the officer is involved, the officer could not issue a citation. The court held that although the officer did not actually take affirmative action, the officer was performing his primary responsibility because his responsibilities included enforcement of traffic laws. Id. at 494. As such, the officer's injuries were covered by workers' compensation.

However, in City of Fort Lauderdale v. Abrams, 561 So.2d 1294 (Fla. 1st DCA 1990) a forensic detective was on her way to work in her personal vehicle when she was struck from behind at a red light. Abrams, 561 So.2d at 1294. Because the forensic detective was not investigating a crime or enforcing the law when she was struck from behind, the court stated that she was not carrying out her primary responsibility. As a result, the court held the injury did not arise out of or within the course and scope of her employment. Id. This detective's injuries were not covered by workers' compensation.

In City of Lakeland v. Schiel, 687 So.2d 1323 (Fla. 1st DCA 1997), an on-duty Special Investigation Division (SID) officer driving an unmarked vehicle was denied workers' compensation benefits when he was struck by a van while checking on his daughter who had just been in a car accident. Because it was not protocol for SID officers to investigate traffic accidents, the court held that claimant was on a "personal errand at the time of his injury and was not acting within the course or scope of his employment or discharging the duties of a law enforcement officer." Id. at 1324.

Law Enforcement, Correctional, and Correctional Probation Officers' Duty to Act

There is no provision in Florida law which places a legal obligation on law enforcement, correctional, or correctional probation officers to take affirmative action when they are off-duty. However, inquiries by staff to several law enforcement agencies (Sheriff and Police Departments) indicate that most law enforcement agencies, through internal policy, require their officers to be "on-duty" 24 hours a day. These law enforcement officers, who have the authority to make arrests when off-duty, would have a responsibility to take reasonable affirmative action any time they witness a criminal act.

Staff inquiries also indicate that the majority of correctional officers are not sworn law enforcement officers and do not have the authority to make arrests when off duty. Also, staff inquiries reveal that correctional probation officers have the authority to make arrests, but this authority is limited to the offenders on probation.

B. EFFECT OF PROPOSED CHANGES:

The circumstances in which a law enforcement, correctional, or correctional probation officer is deemed to be acting within the course and scope of employment would be broadened. Law enforcement, correctional, and correctional probation officers going to and coming from work in an official law enforcement or corrections vehicle would be deemed to be engaging in a special errand or mission and, therefore, would be covered by workers' compensation.

The effect of the bill is best illustrated in the following hypothetical:

A deputy sheriff is off duty and on the way home. While stopped at a stop light 2 blocks from home, the deputy sheriff is injured when a car struck the rear of his vehicle. As a fringe benefit of his employment, the deputy sheriff had been provided with a sheriff's office vehicle, which he is allowed to use on personal business and which he was using at the time of the accident. Prior to the accident, the deputy sheriff had been monitoring the police radio in the

vehicle, in the event that he might be called on duty to assist with some law enforcement matter. Additionally, the deputy sheriff is a member of the sheriff's office emergency field force, which requires him to possess and monitor a beeper at all times, which he was monitoring at the time of the accident.

Is the law enforcement officer's injury covered by workers' compensation?

Current Law - Probably No

Under current law, the relevant issue in this hypothetical would be whether the law enforcement officer was carrying out his primary responsibility which is the "prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state." The First District Court of Appeal has held in several cases with similar facts that the law enforcement officer was not carrying out his or her primary responsibility, and therefore was not acting within the course and scope of employment. Thus, it is probable that the deputy sheriff would not recover workers' compensation benefits.

The Bill - Yes

Under the bill, the relevant issue is whether the employee is a law enforcement officer as defined in s. 943.10(14), F.S., and whether the employee is going to or coming from work in an official law enforcement or corrections vehicle. There presumably would be no inquiry into whether the law enforcement officer is carrying out his or her primary responsibility. As such, because the deputy sheriff is a law enforcement officer and because he was coming from work in a law enforcement vehicle, he would be covered by workers' compensation.

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?

N/A

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

State and local government employers of law enforcement, correctional, and correctional probation officers will be responsible for extending workers' compensation coverage to law enforcement, correctional, and correctional probation officers when they are going to or coming from work in an official law enforcement or corrections vehicle.

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

Law enforcement, correctional, and correctional probation officers will be eligible to receive workers' compensation benefits if they are injured going to or coming from work in an official law enforcement or corrections vehicle.

b. 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

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?

N/A

- 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?

N/A

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

N/A

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?

N/A

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:

Amends s. 440.092, F.S.

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

This bill extends workers' compensation coverage to law enforcement, correctional, and correctional probation officers for accidents that previously were not covered by workers' compensation. Therefore, this bill may result in an increase in the premiums for workers' compensation coverage. Additionally, since many state law enforcement agencies and correctional facilities offer health and disability insurance to their officers, then presumably medical and disability benefits for some of these accidents will be paid for through health and disability insurance. Therefore, this bill may also result in a shifting of some costs from their health and disability insurance policy to workers' compensation insurance. The amount of increased premium and the extent of the cost shifting is indeterminate because it is not known how many additional claims would result from the increased availability for workers' compensation coverage created by this bill.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

The total expenditures are indeterminate because it is not known how many additional claims would result from the increased availability for workers' compensation coverage created by this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

This bill extends workers' compensation coverage to law enforcement, correctional, and correctional probation officers for accidents that previously were not covered by workers' compensation. Therefore, this bill may result in an increase in the premiums for workers' compensation coverage. Additionally, since many local law enforcement agencies offer health and disability insurance to their officers, then presumably medical and disability benefits for some of these accidents will be paid for through health and disability insurance. Therefore, this bill may also result in a shifting of some costs from their health and disability insurance policy to workers' compensation insurance. The amount of increased premium and the extent of the cost shifting is indeterminate because it is not known how many additional claims would result from the increased availability for workers' compensation coverage created by this bill.

Further, the fiscal impact of this bill is also indeterminate because it is possible that state and local governments, fearing potential increased costs, could discontinue the practice of allowing officers to drive official vehicles to their homes.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

The sponsor of the bill intends to offer an amendment which would limit the bill's applicability to law enforcement officers as defined in s. 943.10(1), F.S. This would narrow the bill so that correctional and correctional probation officers are not provided the extended workers' compensation coverage and would make the bill identical to HB 4179 (1998), which passed the House last year but did not become law.

The rationale for the amendment is that correctional and correctional probation officers do not have the same authority as law enforcement officers when going to and coming from work. The majority of correctional officers are not sworn law enforcement officers and do not have the authority to make arrests when they are off duty. Moreover, correctional probation officers have limited arrest authority (only persons on probation). Law enforcement officers, on the other hand, are considered to be "on duty" 24 hours a day (according to the policy of most law enforcement agencies), and have the authority to make arrests any time they observe illegal behavior.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the Committee on Insurance adopted the following amendment:

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Amendment #1 (offered in Committee by Rep. Goode): On page 1, lines 25-28, this amendment narrows the definition of "officer" so that the bill applies only to law enforcement officers, and not correctional or correctional probation officers.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge