

HOUSE MESSAGE SUMMARY

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BILL: CS/CS/SB 108, First Eng.
SPONSOR: Appropriations Committee, Banking and Insurance Committee and Senator Smith
SUBJECT: Workers' Compensation
PREPARED BY: Senate Committee on Banking and Insurance
DATE: March 20, 2002

I. Amendments Contained in Message:

House Amendment 1 - 570665 (body with title)

House Amendment 2 - 145359 (body with title)

II. Summary of Amendments Contained in Message:

House Amendment 1

The amendment maintains the current provisions of the bill which provide that a firefighter, an emergency medical technician, or a paramedic that is engaged in responding to an emergency within Florida, but outside of the employer's jurisdiction or off-duty, and not engaged in services by a private employer, is considered to be acting within the course of employment and thereby covered by workers' compensation.

The amendment adds a provision related to benefits for correctional officers and local law enforcement officers. Current law (s. 112.18, F.S.) provides that any condition or impairment of health of any firefighter or state law enforcement officer caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to have been accidental and to have been suffered in the line of duty unless the contrary is shown by competent evidence. In order for the presumption to apply, the firefighter or state law enforcement officer must have successfully passed a physical examination upon entering into service as a firefighter or state law enforcement officer that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. This amendment expands that legal presumption to include any correctional officer or correctional probation officer. The amendment does not mandate that a correctional officer or a correctional probation officer undergo a mandatory pre-employment physical examination requirement that is currently required for firefighters and state law enforcement officers.

The provisions of this amendment are also contained in SB 278, which was voted favorably in Governmental Oversight & Productivity Committee and Criminal Justice Committee. However, the bill was then referred to Appropriations, but not heard. The bill analysis for SB 278 noted that the bill would have no fiscal impact on FRS (Florida Retirement System) employers (state and county employers), since the FRS benefit is already funded. That is, benefit payments would increase, but the contribution rate would not need to be increased to fund this benefit. It is possible, however, that as more members use in-line-of-duty disability benefits, it would produce

actuarial losses that would slowly emerge. If such costs occur, they would have to be funded through contribution rate increases as recommended in future annual valuations of the FRS.

The SB 278 bill analysis noted that most local governments are not members of FRS. Some 500 of the local governments administer their own pension plans for employees. Because an application for disability retirement will implicate a workers' compensation claim, there will be additional expenses passed along to those participating units of government whose employees make such claims.

The bill may have also impact local governments as a result of the special terms and conditions of life and disability insurance contracts these local governments maintain related to accidental death or disability for law enforcement officers and correctional officers. This amendment authorizes governmental entities to negotiate for additional life and disability insurance benefits for any law enforcement officer or correctional officer, in addition to firefighters, as currently provided. According to the Department of Management Services, the existing life insurance contract with Prudential does not cover the benefits described by the bill to firefighters or to any other group of eligible employees. If such coverage were to be negotiated by the state to eligible state firefighters and law enforcement officers, the estimated recurring fiscal impact would be:

- \$143,505 - \$156,352 per year combined state and employee contribution, for redefined accidental death benefit premium this year.
- \$33,046 - \$231,323 per year, combined state and employee contribution, for redefined waiver of premium benefit this year.

According to the bill analysis for SB 278 and the House companion, HB 5, the implementation of this amendment would have an estimated initial, annual fiscal impact of \$2.6 million on the state (for correctional officers) workers' compensation benefits and \$5.3-\$6.2 million on the local governments (for law enforcement officers) for workers' compensation and disability benefits. The estimate for the state was provided by the Division of Risk Management of the Department of Insurance. The division estimated that 35 employees each year would make a claim and that each claim would cost on average \$75,000. The division also noted that for each of these claims, the state would have to consider the outgoing years' medical and indemnity costs associated with each claim. The impact on local governments was provided by the Florida Public Employers Relations Association.

House Amendment 2

This amendment contains most of the provisions contained in CS/SB 2304 by Banking and Insurance and Senator Latvala (which included the provisions of CS/SB 1612 by Banking and Insurance and Senator Posey). The provisions of this amendment that are *different* than the provisions of CS/SB 2304 are as follows:

1. Authorizes medical providers and carriers to negotiate medical fees for independent medical examinations for workers' compensation in excess of the fee schedule. Presently, s. 440.13, F.S., provides that medical fees, except for managed care arrangements, must be charged pursuant to the fee schedule adopted by the Division of Workers' Compensation by rule. This exception to the fee schedule is meant to address a recent

- court case , *City of Riviera Beach v. Napier*, 791 So.2d 1160 (Fla. 1st DCA 2001) in which a physician's overcharge for an independent medical examination removed the physician from the statutory category of independent medical examiners qualified to testify. The physician was paid \$700 which was in excess of the maximum fee schedule amount of \$400 for an independent medical examiner. It is unclear to what extent the provision of medical care in excess of the fee schedule for independent medical examinations would adversely impact workers' compensation insurance premiums.
2. The three-member panel, (the Insurance Commissioner, or designee, and two members appointed by the Governor) which establishes the statewide schedule of maximum reimbursement allowances for workers' compensation health care treatment would be required to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules, and alternative reimbursement methods of medical providers and health care facilities. In addition, the three-member panel would be required to survey carriers and providers to determine the availability and accessibility of health care delivery and the potential impact of changing the reimbursement method. The panel would be required to submit a report to the Legislature. The Division of Workers' Compensation would be required to provide administrative support, services, and data to the panel.
 3. The amendment clarifies that the managed care opt-out provision adopted by the Legislature in 2001 was intended to allow a carrier/employer to opt-out of mandatory managed care without regard to the date of accident.
 4. Mandatory appellate mediation is not addressed in the amendment. CS/SB 2304 requires mandatory appellate mediation.
 5. The amendment revises s. 440.34, F.S., by substituting the term, "petition" for "claim" and provides that attorneys fees would not attach until 30 days after the date the carrier/employer receives the petition. The same attorney fee provision is found in section 8 of CS/SB 2304.
 6. The amendment does not establish penalties for carriers for that fail to comply with the auditing provisions of s. 440.381, F.S. CS/SB 2304 provides for a fine of at least \$1,000 for each instance of noncompliance.
 7. The amendment does not require a certificate of insurance to indicate the states for which coverage applies. CS/SB 2304 require employers to provide such proof of compensation as a condition of receiving a building permit.

The remaining provisions of this House amendment are all contained in CS/SB 2304, which provides changes to the workers' compensation system that are designed to expedite the dispute resolution process, provide greater enforcement authority for the Division of Workers' Compensation to enforce exemption and coverage requirements of ch. 440, F.S., and reduce costs for the overall administration of the workers' compensation system.

The following is a summary of the significant provisions of CS/SB 2304 which are all included in this amendment:

Informal Dispute Resolution

1. Eliminates the request for assistance process in order to expedite the resolution process.
2. Authorizes the Division of Workers' Compensation to contact the injured worker or the workers' representative directly upon receipt of the notice of injury or death to provide information and facilitate resolution.

Formal Dispute Resolution

1. Revises the statutory dispute resolution time line in order to expedite the process. For example, a mediation conference would be required to be held within 40 days after the receipt of the petition for benefits. Currently, the average number of days between the receipt of the petition of benefits and the scheduled mediation conference is 124 days. The bill would also require that *all* final hearings be held within 210 days after receipt of the petition. Last year, the final hearing was generally held, *on average*, within 222 days after receipt of the petition for benefits.
2. Authorizes the use of private mediation prior, at the carrier's expense, prior to the date of mandatory mediation in order to expedite the resolution process.
3. Requires use of expedited hearing for claims relating to determination of pay or claims for \$5,000 or less for medical benefits only.
4. Limits the conditions in which a continuance for a mediation conference may be granted by a judge of compensation claims to circumstances beyond the party's control and requires that any order granting a continuance must set forth the date of the rescheduled mediation. Provides that a mediation conference cannot be used solely for the purpose of mediating attorney's fees.
5. Authorizes the judge of compensation claims to dismiss claims that have been inactive for the previous 12 months unless good cause is shown.

Exemptions From Workers' Compensation Coverage

1. Revises the exemption criteria for businesses primarily engaged in the construction industry by eliminating exemptions for persons engaged in commercial construction. For any commercial construction job-site estimated to be valued at \$250,000 or greater, a person who is actively engaged in the construction industry would not be considered an independent contractor and would be either an employer or employee and would not be exempt from the coverage requirements of chapter 440, F.S. Exemptions would continue to be available to persons primarily engaged in residential construction.

2. Provides greater enforcement tools for the Division of Workers' Compensation. Persons claiming an exemption would be required to maintain certain business records and to provide such records to the division upon request. If such records were not produced within 3 business days, the division would be authorized to issue a stop-work order. The division would be *required* to issue a stop-work order within 72 hours of making a determination that a person failed to secure compensation coverage, as required by law. The division would be *required*, rather than allowed, to assess a penalty in the amount of the premium evaded or up to twice the amount of the premium evaded, or \$1,000, whichever is greater, against employers that failed to secure compensation, as required by ch. 440, F.S.

Compliance and Enforcement Provisions

1. Revises reward eligibility requirements for the Anti-Fraud Reward Program of the Department of Insurance in order to encourage greater participation in the program. The department would be authorized to provide a reward of up to \$25,000 to persons providing information to the department which leads to the arrest and conviction of persons committing insurance fraud. An employer would be required to post a notice informing employees of the Anti-Fraud Reward Program, for information leading to the arrest and conviction of persons committing insurance fraud, including employers who illegally fail to obtain workers' compensation coverage.
2. Revises disclosures on the insurance application form and revises auditing provisions for carriers.