

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 1736

INTRODUCER: Criminal Justice Committee and Senator Hooper

SUBJECT: Records of Physical Examinations

DATE: February 9, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1736 amends s. 943.13(6), F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer to maintain records of the officer's pre-employment physical examination for at least 5 years after the officer's separation from that agency. If an employing agency fails to maintain the records of the physical examination for the 5-year period after the officer's separation, it is presumed that the officer has met the requirement of successfully passing a pre-employment physical examination that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. The absence of any finding of such disease in the pre-employment examination is a crucial prerequisite to the workers' compensation presumption that an officer with such disease acquired it accidentally and in the line of duty. *Therefore, retention of the physical examination record is essential evidence to establish a compensable occupational disease.*

The previously-described presumption of compensability also applies to firefighters. The bill amends s. 112.18, F.S., to specify that the medical examination required for firefighter certification pursuant to s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service.

The bill corrects omissions in ss. 112.18 and 943.13(6), F.S., to reference "correctional officers and correctional probation officers" regarding the presumption of compensability.

The retention of these records should not have any fiscal impact on state and local government. The impact of the change on workers' compensation claims is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Physical Examination Requirement for Employment or Appointment as a Law Enforcement, Correctional, or Probation Officer

Section 943.13, F.S., provides minimum qualifications for employment or appointment as a fulltime, part-time, or auxiliary law enforcement, correctional officer, or correctional probation officer. Among the qualifications is a requirement to pass a physical examination.¹

Physical Examination Requirement for Certification as a Firefighter

Section 633.412, F.S., provides qualifications for certification as a firefighter. Among the qualifications is a requirement to be in good physical condition as determined by a medical examination.² The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.³ There does not appear to be a provision for firefighters comparable to s. 943.13(6), F.S., which requires a pre-employment physical examination.

Workers' Compensation – Presumption of Compensability

In regards to a workers' compensation claim relating to an occupational disease, the term "occupational disease" means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public. It is also a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.⁴

Section 112.18(1)(a), F.S., provides that any condition or impairment of health of any firefighter, law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death is presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence.

¹ Section 943.13(6), F.S.

² Section 633.412(5), F.S.

³ Rule 69A-37.037 ("Firefighter Training Course Medical Examination"), F.A.C., available at https://www.flrules.org/gateway/notice_Files.asp?ID=21630435 (last visited on Feb. 4, 2022) and Form DFS-K3-1022 ("Medical Examination to Determine Fitness for Firefighter Training, Bureau of Fire Standards and Training"), Division of State Fire Marshal, Department of Financial Services, available at https://www.myfloridacfo.com/division/sfm/bfst/DFS-K4-1022_Medical_Jan2018.pdf (last visited on Feb. 4, 2022).

⁴ Section 440.151(2), F.S.

However, a crucial prerequisite to this statutory presumption is that the firefighter or officer successfully passed a physical examination prior to entering into any such service that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. This prerequisite is provided in s. 112.18(1)(a), F.S., and is relevant to any firefighter, law enforcement officer, correctional officer, or correctional probation officer. A similar provision relevant only to law enforcement officers, correctional officers, and correctional probation officers is found in s. 943.13(6), F.S.

If the examination fails to reveal evidence of such disease, the firefighter or officer must present evidence of suffering from such disease but doesn't have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.⁵ The evidentiary burden then shifts to the employer to show by clear and convincing evidence that the disease was caused by a non-work-related event or exposure.⁶

The Pre-Employment Physical is Crucial Evidence for the Compensability Presumption

As provided in s. 112.18(1)(a), F.S., to be eligible to use the presumption of compensability, a firefighter or officer must have successfully passed a physical examination upon entering into service, which examination failed to reveal any evidence of any tuberculosis, heart disease, or hypertension. This physical examination is crucial evidence in a dispute over workers' compensation benefits.

When the parties cannot produce a record of a pre-employment physical, the firefighter or officer cannot use the presumption to establish a compensable occupational disease. For example, in testimony before the House Banking and Insurance Committee, staff of the Florida State Fraternal Order of Police noted they had a workers compensation issue because an agency hired a third party vendor to handle medical records and that vendor purged the records system for anyone who was hired prior to 1998. One officer impacted by this purge suffered from posttraumatic stress disorder due to a violent public incident.⁷

Eligibility for the Workers' Compensation Presumption

In a disputed workers' compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure 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; or
- Was previously compensated pursuant to s. 112.18, F.S., and ch. 440, F.S. (workers' compensation) for tuberculosis, heart disease, or hypertension and thereafter sustains and

⁵ *McDonald v. City of Jacksonville*, 286 So.3d 792, 795 (Fla. 1st DCA 2019), relying primarily on *Walters v. State, DOC, Div. of Risk Management*, 100 So.3d 1173 (Fla. 1st DCA 2012) (rehearing denied), review denied by *Florida Dept. of Corrections v. Walters*, 108 So. 3d 654 (Fla. 2013).

⁶ *Butler v. City of Jacksonville*, 980 So.2d 1250, 1251-1252 (Fla. 1st DCA 2008).

⁷ Public testimony of Lisa Henning, representing the Florida State Fraternal Order of Police, before the House Insurance & Banking Subcommittee hearing on HB 453 (2022), Jan. 19, 2022. This testimony is available at <https://thefloridachannel.org/videos/1-19-22-house-insurance-banking-subcommittee/> (last visited on Feb. 4, 2022).

reports a new compensable workers' compensation claim under s. 112.18, F.S., and ch. 440, F.S., and the officer has 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 tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.⁸

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment of the employing agency.⁹

Firefighters are not subject to the exclusion for prior treatment or compensation and are not covered by the claim-filing deadline that allows a law enforcement officer, correctional officer, or correctional probation officer file a claim up to 180 days after leaving employment. A firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.¹⁰

Records Retention

According to the records retention schedule for state and local government agencies published by the Florida Department of State, reports of job-related medical examinations must be retained by the Florida Retirement System (FRS) for 25 years after a participating employee separates from government employment.¹¹

Local governments that do not participate in the FRS must maintain reports of job-related medical examinations for 50 years after a participating employee separates from government employment.¹²

State agencies that employ people through the Other Personnel Services system, as interns, or on a voluntary basis must maintain reports of job-related medical examinations for three years after the employee separates from government employment.¹³

III. Effect of Proposed Changes:

The bill amends s. 943.13(6), F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer to maintain records of the officer's pre-employment physical examination for at least five years after the officer's separation from that agency. If an employing agency fails to maintain the records of the physical examination for the

⁸ Section 112.18(1)(b)(1), F.S.

⁹ Section 112.18(1)(b)(4), F.S.

¹⁰ Sections 440.151(6) and 440.185(1), F.S.

¹¹ Florida Department of State, Division of Library and Information Services, *General Records Schedule GS1-SL for State and Local Government Agencies*, p. 31, available at <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf> (last visited on Feb. 4, 2022).

¹² *Id.* at 32.

¹³ *Id.*

5-year period after the officer's separation, it is presumed that the officer has met the requirement of that subsection that the officer successfully passed a pre-employment physical examination that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. The absence of any finding of such disease in the pre-employment examination is a crucial prerequisite to the workers' compensation presumption that an officer with such disease acquired it accidentally and in the line of duty. *Therefore, retention of the physical examination record is essential evidence to establish a compensable occupational disease.*¹⁴

The previously-described presumption of compensability also applies to firefighters. The bill amends s. 112.18, F.S., to specify that the medical examination required for firefighter certification pursuant to s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service.

Finally, s. 112.18, F.S., mistakenly omits in two places in the statute, reference to correctional officers and correctional probation officers in regard to the presumption of compensability, even though the statute and s. 943.13(6), F.S., specifically provide that the presumption of compensability applies to these officers. The bill corrects these reference omissions.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁴ This record retention provision does not apply to firefighters. Medical examination records required for firefighter certification are retained by the Department of Financial Services.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The record retention requirement of the bill does not impose additional duties on government employers, because state and local government agencies are already subject to record retention requirements that exceed the five-year benchmark established in this bill. (See discussion of records retention schedule, *supra*.)

The impact of the change on workers' compensation claims is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 943.13 and 112.18 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on January 25, 2022:**

The committee substitute:

- Provides that a medical examination required for firefighter certification pursuant to s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service; and
- Corrects the omission of references to correctional officers and correctional probation officers in regard to a presumption of compensability (in workers' compensation law) that applies to these officers.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
