

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 453 Records of Physical Examinations of Officers
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Duggan and others
TIED BILLS: IDEN./SIM. BILLS: SB 1736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Herendeen	Luczynski
2) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

Under s. 112.18, F.S., a law enforcement officer, correctional officer, correctional probation officer, or firefighter who becomes disabled by tuberculosis, heart disease, or hypertension, is entitled to the presumption that the disease was contracted in the line of duty, and is therefore compensable under workers compensation law, unless the contrary can be shown by competent evidence. The presumption shifts the burden of proof to the employer, who must prove that the disabling disease is not related to the officer or firefighter's job duties or workplace exposures. To be eligible for this presumption, the officer or firefighter must have taken a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

Additionally, to receive the benefit of the presumption, the minimum employment standards for a law enforcement, correctional, or correctional probation officer require such an officer to have passed a specified pre-employment physical which did not reveal any evidence of tuberculosis, heart disease, or hypertension. Such officers are prohibited from using a physical examination from a former employing agency for purposes of claiming the presumption under s. 112.18, F.S., against the officer's current employing agency.

A firefighter is not statutorily required to complete a specified physical examination prior to employment, but a firefighter must be in good physical condition, as determined by a specified medical professional, to enroll in firefighting training courses and receive his or her firefighter certification. However, the medical assessment required for firefighter certification does not mention specific screening for tuberculosis, heart disease, or hypertension.

CS/HB 453 requires the employing agency of a law enforcement, correctional, or correctional probation officer and the fire service provider employing a firefighter to maintain records of an employee's pre-employment physical examination for at least five years after he or she separates from the employing agency or fire service provider. Under the bill, if an employing agency or fire service provider fails to maintain the pre-employment physical examination records and contests a petition for workers' compensation benefits filed by an officer or firefighter, the officer or firefighter is entitled to the presumption that his or her disability due to tuberculosis, heart disease, or hypertension is compensable as an occupational disease under workers' compensation law.

The bill also authorizes the medical examination required for firefighter certification to satisfy the pre-employment physical examination required under s. 112.18, F.S., if a firefighter's employer did not require a pre-employment physical examination, and the certification medical examination did not reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill may have an indeterminate negative fiscal impact on the state and local governments because they may incur higher claim costs for workers' compensation claims due to the presumption created by the bill.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Workers' Compensation Presumption

A legal presumption makes it easier for an employee to obtain workers' compensation benefits by shifting the burden of proof in a disability determination from the employee to the employer.¹

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job is associated with a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show 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.²

Florida law includes a presumption that treats tuberculosis, heart disease, or hypertension as an occupational disease associated with firefighters, law enforcement officers, correctional officers, and correctional probation officers. If these employees become temporarily or partially disabled by tuberculosis, heart disease, or hypertension, the law presumes that the employee contracted the disease in the line of duty unless the contrary can be shown by competent evidence.³

However, firefighters, law enforcement officers, correctional officers, and correctional probation officers are entitled to the presumption only if the officer or firefighter passed a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.⁴

If the employee's pre-employment physical failed to reveal any evidence of disease, the employee must demonstrate that he or she suffers from tuberculosis, heart disease, or hypertension, but does not have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.⁵

To overcome the statutory presumption, the employer must present clear and convincing evidence that the disease was caused by a non-work-related event or exposure.⁶

Qualifications for Employment as a Law Enforcement, Correctional, or Probation Officer

Under s. 943.13, F.S., to be employed or appointed as a law enforcement, correctional, or correctional probation officer, a person must:

- Satisfy certain age, education, and citizenship requirements;
- Complete a training course;
- Pass a certification exam;
- Pass a criminal background check; and

¹ *Caldwell v. Division of Retirement, Florida Dept. of Administration*, 372 So. 2d 438 (Fla. 1979).

² S. 440.151(2), F.S.

³ Ss. 112.18(1)(a) and 175.231, F.S.

⁴ S. 112.18(1)(a), F.S.

⁵ *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019), citing *Walters v. State, DOC/Div. of Risk Management*, 100 So. 3d 1173 (Fla. 1st DCA 2019), rehearing denied, review denied 108 So. 3d 654 (The presumption is an adequate substitute for evidence of occupational causation, and compels the legal result that a claimant has proven occupational causation).

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

- Pass a physical examination conducted by a licensed physician, physician assistant, or licensed advanced practice registered nurse, based on specifications established by the Commission,⁷ which includes screening for evidence of tuberculosis, heart disease, or hypertension.⁸
 - An officer must complete this pre-employment physical examination each time he or she is employed or appointed at a new employing agency.⁹

To receive a presumption for workers' compensation benefits that he or she contracted the disease in the line of duty, a law enforcement, correctional, or correctional probation officer must have successfully passed the physical examination required for employment, which examination must have failed to reveal evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional, or correctional probation officer is prohibited from using a physical examination from a former employing agency to claim the workers' compensation presumption against his or her current employing agency.

Firefighter Qualifications for Certification

A person applying for certification as a firefighter must:¹⁰

- Be a high school graduate or the equivalent;
- Not have been convicted of specified crimes;
- Submit his or her fingerprints to be processed at the state and national level;
- Have a good moral character;
- Be a nonuser of tobacco or tobacco products for at least one year immediately prior to his or her application; and
- Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant; an osteopathic physician, surgeon, or physician assistant; or an advanced practice registered nurse.

The medical professional who conducts the examination 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,¹¹ however, current law does not explicitly require screening for tuberculosis, heart disease, or hypertension.

Records Retention

According to the records retention schedule for state and local government agencies published by the Florida Department of State (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.¹² 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.¹³ 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.¹⁴

Although current records retention requirements may not specifically require retention of the pre-employment or pre-certification physical examinations of law enforcement, correctional, or correctional

⁷ "Commission" means the Criminal Justice Standards and Training Commission. S. 943.10(5), F.S.

⁸ S. 943.13(6), F.S.

⁹ "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. S. 943.10(4), F.S.

¹⁰ Ss. 633.408(6)(a)3 and 633.412(5), F.S.

¹¹ Rule 69A-37.037 and Form DFS-K3-1022.

¹² Florida Department of State, Division of Library and Information Services, *General Records Schedule GS1-SL for State and Local Government Agencies*, p. 31, <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited Jan. 25, 2022).

¹³ *Id.* at 32.

¹⁴ *Id.*

probation officers or firefighters, employers of such officers and firefighters are required to maintain these records as job-related medical examinations.

However, despite being subject to records retentions requirements, according to the Florida State Fraternal Order of Police, a vendor hired by the City of Orlando mistakenly destroyed the pre-employment physical records of police officers taken prior to 1998. This error complicated the City's ability to provide workers' compensation benefits to an officer who suffered post-traumatic stress disorder after responding to the Pulse Nightclub shooting that left 50 people dead on June 12, 2016.¹⁵

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 from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment.
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.¹⁶
- Fails to make a claim for benefits prior to or within 180 days after leaving the employment of the employing agency.¹⁷

Firefighters are not subject to these specified exclusions from the presumption, and are therefore subject to separate requirements under ch. 440, F.S., which require a firefighter suffering from tuberculosis, heart disease, or hypertension to 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.¹⁸

Pre-Employment Physical

To use the presumption, a "firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition."¹⁹

The requirement of a pre-employment physical makes the record of such physical crucial evidence in a dispute over workers' compensation benefits.

For example, a single reported elevated blood pressure reading at a law enforcement officer's pre-employment physical examination did not constitute evidence of the condition of hypertension, and thus, the officer was able to establish the presumption that his hypertension was a result of his job duties and was therefore compensable under worker's compensation. Had the officer's pre-employment physical examination not been maintained by his employer, he may not have been able to illustrate that his hypertension was not a condition that he suffered from prior to his employment as a law enforcement officer.²⁰

In another worker's compensation case, the First District Court of Appeal (First DCA) found that a firefighter's pre-employment physical examination when he applied to be a Volusia County firefighter in 2004, rather than the physical examination he submitted to upon first becoming certified as a firefighter in 1992, was the relevant examination for determining whether he was entitled to the statutory

¹⁵ Public testimony of Lisa Henning, representing the Florida State Fraternal Order of Police, Insurance & Banking Subcommittee hearing on 2022 House Bill 453, Jan. 19, 2022.

¹⁶ S. 112.18(1)(b)(1), F.S.

¹⁷ S. 112.18(1)(b)(4), F.S.

¹⁸ Ss. 440.151(6) and 440.185(1), F.S.

¹⁹ S. 112.18(1)(a), F.S.

²⁰ *City of Tavares v. Harper*, 230 So.3d 918 (Fla 1st DCA 2017) (a single isolated elevated blood pressure reading in the claimant's medical history was attributed to be more likely than not an indication of "white coat" syndrome at the pre-employment physical).

presumption that his hypertension was compensable as an occupational disease. Because the firefighter's pre-employment physical examination in 2004 revealed that he was diagnosed with hypertension but was otherwise fit for duty, he was not eligible for the presumption and thus not eligible for workers' compensation benefits when he later became disabled by hypertension.²¹

In the alternative, a law enforcement officer who suffered a heart attack was not eligible for workers' compensation benefits, even though his pre-employment physical did not reveal evidence of hypertension or heart disease, because the employer demonstrated that the officer's heart attack was caused by a genetic condition that had not been detected in the officer's pre-employment physical.²²

When the parties cannot produce a record of a pre-employment physical, a firefighter or law enforcement officer cannot use the presumption to establish a compensable occupational disease. For example, a firefighter who did not undergo a physical examination prior to employment, because his employer did not require such physical, was denied workers' compensation benefits, even though he completed a physical examination two years into his employment which did not reveal any evidence of a covered disease. The First DCA held that: "The statute creating the presumption is very clear and unambiguous and requires a physical examination upon entering into any service as a fireman as a prerequisite to entitlement to the presumption."²³ However, the First DCA has held that this scenario is distinguishable from one in which a firefighter's pre-employment physical exam was partially administered ten days prior to his employment but was not completed until 15 days after he began working; such firefighter was entitled to the presumption.²⁴

Effect of Proposed Changes

CS/HB 453 amends ss. 943.13 and 112.18, F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer and the employing fire service provider of a firefighter to maintain records of an employee's pre-employment physical examination for at least five years after he or she separates from the employing agency or fire service provider.

Under the bill, if the employing agency or fire service provider fails to maintain records of an officer's or firefighter's pre-employment physical examination, the officer or firefighter is entitled to the presumption that his or her disability due to tuberculosis, heart disease, or hypertension is compensable as an occupational disease under workers' compensation law.

Because state and local government agencies are already required to retain such records longer than five years under Department of State requirements, the records retention requirement under the bill does not impose any new duties on government employers. However, the bill may encourage such employers to specifically maintain pre-employment physical examinations more diligently, as failing to maintain the records will result in an employee receiving the presumption for worker's compensation benefits, when his or her physical examination may have proven otherwise.

The bill also authorizes the medical examination required for firefighter certification to satisfy the pre-employment physical examination required under s. 112.18, F.S., if:

- A firefighter's employer did not require a pre-employment physical examination; and
- The certification medical examination did not reveal any evidence of tuberculosis, heart disease, or hypertension.

A firefighter may only undergo a certification medical examination once in his or her career, as such examination is only required to begin training and receive certification as a firefighter, and is not required to take place with each new employer. As such, the bill may encourage fire service providers to require pre-employment physical examinations of all new employees.

The bill has an effective date of July 1, 2022.

²¹ *Volusia County Fire Services v. Taaffe*, So.3d 81 (Fla. 1st DCA 2009).

²² *Punsky v. Clay County Sheriff's Office*, 18 So.3d 577 (Fla. 1st DCA 2009).

²³ *Cumbe v. City of Milton*, 496 So 2d 923 (Fla. 1st DCA, 1986).

²⁴ *City of Tarpon Springs v. Vaporis*, 953 So.2d 597 (Fla. 1st DCA 2007).

B. SECTION DIRECTORY:

- Section 1:** Amends s. 112.18, F.S., relating to firefighters and law enforcement or correctional officers; special provisions relative to disability.
- Section 2:** Amends s. 943.13, F.S., relating to officers' minimum qualifications for employment or appointment.
- Section 3:** Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on the state and local governments because they may incur higher claim costs for workers' compensation claims due to the presumption created by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not Applicable. This bill does not appear to affect county or municipal governments.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill does not require rule-making authority and does not affect existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and one amendment to the PCS and reported the bill favorably as a committee substitute.

The PCS differed from the original bill as it authorized the medical examination required for firefighter certification to serve as the pre-employment physical examination required under s. 112.18, F.S., if such medical examination did not reveal any evidence of tuberculosis, heart disease, or hypertension.

The amendment to the PCS:

- Authorized a firefighter's certification medical examination to satisfy the physical examination required for the worker's compensation presumption only if the firefighter did not undergo a pre-employment physical examination and the certification medical examination did not reveal any evidence of tuberculosis, heart disease, or hypertension.
- Required that if a firefighter underwent a pre-employment physical examination the firefighter's employing fire service provider must retain records of the examination for 5 years after the firefighter's separation from employment with the fire service provider.
- Provided that if the fire service provider fails to retain the records of an employee's pre-employment physical examination for the 5-year period, and the firefighter files a claim for worker's compensation benefits, the firefighter is entitled to the presumption that his or her disability was caused by contracting tuberculosis, heart disease, or hypertension in the line of duty.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.