

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 689 Workers' Compensation Benefits for First Responders

SPONSOR(S): State Affairs Committee, Giallombardo, Fischer and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Villa	Toliver
2) Insurance & Banking Subcommittee	16 Y, 0 N	Herendeen	Luczynski
3) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	Topp
4) State Affairs Committee	23 Y, 0 N, As CS	Villa	Williamson

SUMMARY ANALYSIS

Workers' compensation laws require employers to pay medical and indemnity benefits if an employee suffers an accidental injury or death arising out of work performed in the course and scope of their employment. While mental or nervous injuries without an accompanying physical injury requiring medical treatment are typically not compensable, Florida law provides such benefits to law enforcement officers, firefighters, emergency medical technicians, and paramedics (first responders) experiencing posttraumatic stress disorder (PTSD). First responders qualify for PTSD disability benefits if they, while acting within the course and scope of employment, experience a qualifying event and are subsequently diagnosed with PTSD as a result.

Currently, notice of a PTSD-related injury is due to the employer within 90 days of a qualifying event or the manifestation of the disorder, whichever is later. If the compensability of an injury is disputed, a claim must be filed within 52 weeks of the qualifying event.

The bill makes the notice of injury due within 90 days of a qualifying event or diagnosis of PTSD, rather than the manifestation of the disorder, whichever is later. Similarly, the bill extends the claim filing deadline to either one year after the qualifying event or diagnosis of the disorder, whichever is later.

Extending the claim deadline to one year after a PTSD diagnosis allows claims more than one year after a qualifying event. Symptoms of PTSD may begin shortly after a traumatic event or may not appear until years after the event.

The bill also extends workers' compensation benefits to a correctional officer with PTSD without requiring a link to a compensable physical injury. The provisions that apply to PTSD benefits for first responders apply to correctional officers except that the qualifying events are different as the nature of the employment is different.

The bill has an indeterminate, but likely significant, negative fiscal impact on state and local governments and the private sector. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Workers' Compensation System

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage and may do so by purchasing insurance from an authorized carrier or through an employee-leasing agreement, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, Inc., which is the state-sponsored insurer of last resort.¹ Florida's workers' compensation system is administered by the Department of Financial Services, Division of Workers' Compensation (DWC).

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.² A work-related accident must be the major contributing cause of any resulting injury or illness, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.³ For work-related injuries, employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.⁴

Payments for lost wages, known as indemnity benefits, may be required if an employee has been disabled for at least eight days;⁵ indemnity benefits are generally payable at 66.67 percent of the employee's average weekly wage,⁶ up to the maximum weekly benefit established by law.⁷ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.⁸
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.⁹
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for no more than five years.¹⁰

Compensability of Occupational Diseases

¹ Section 627.311(5)(a), F.S.

² "Compensable means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

³ Section 440.09(1), F.S.

⁴ Section 440.13(2)(a), F.S.

⁵ Section 440.12(1), F.S.

⁶ An injured worker's average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable injury. Section 440.14(1), F.S.

⁷ Section 440.15(1)-(4), F.S.

⁸ The Florida Supreme Court and the First District Court of Appeal in two cases found the general limitation on temporary indemnity benefits unconstitutional in circumstances where the injured worker had reached the 104-week limit on benefits, but was unable to return to work. The courts invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016); *Jones v. Food Lion, Inc.*, 202 So. 3d 964 (Fla. 1st DCA 2016).

⁹ Section 440.15(3), F.S.

¹⁰ Section 440.15(1)(b), F.S.

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease causes death or disablement, is due to the nature of the employee's occupation, and the employee contracted the disease in the course of his or her employment.¹¹ 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 presents 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.¹²

General Compensability for Mental or Nervous Injuries

Mental or nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment and the physical injury is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.¹³

Temporary disability benefits for a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement (MMI)¹⁴ for the physical injury that triggered the mental or nervous injury.¹⁵ Additionally, benefits may not exceed a 1 percent limit on permanent psychiatric impairment benefits.¹⁶

Compensability for Mental and Nervous Injuries of First Responders

The Legislature recognized the unique occupational hazards associated with the work of first responders¹⁷ in 2007, by authorizing medical benefits for first responders who did not suffer a physical injury but demonstrate, by clear and convincing evidence that a mental or nervous injury arose out of employment.¹⁸ However, while medical treatment is covered, first responders without an accompanying physical injury could not receive indemnity benefits.

The law also relaxed the burden of proof for first responders suffering from occupational diseases caused by exposure to specific toxic substances, and exempted first responders from limits that typically apply to temporary disability benefits.¹⁹

Compensability for Posttraumatic Stress Disorder of First Responders

In 2018, the Legislature authorized indemnity benefits for first responders with posttraumatic stress disorder (PTSD) as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association.²⁰ These benefits are provided in addition to the medical benefits currently allowed for mental and nervous injuries for claims where no physical injury has occurred. PTSD is deemed an "occupational disease," which means all practices and procedures of ch. 440, F.S., apply to the claim, except as otherwise provided. Accordingly, current law applies regarding:

¹¹ Sections 440.09, and 440.151, F.S.

¹² Section 440.151, F.S.

¹³ Section 440.093, F.S.

¹⁴ Temporary indemnity benefits, known as temporary total disability and temporary partial disability benefits, are paid while an injured worker has not yet reached MMI and is either unable to earn a wage or unable to earn the same or greater wage as prior to the compensable injury. Following MMI, permanent total disability or permanent impairment benefits may be paid. Section 440.15, F.S.

¹⁵ Section 440.093(3), F.S.

¹⁶ Section 440.15(3)(c), F.S.

¹⁷ "First responder" means a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in 663.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S. Section 112.1815(1), F.S.

¹⁸ Ch. 2007-87, L.O.F., codified as s. 112.1815, F.S.

¹⁹ *Id.*

²⁰ Ch. 2018-124, L.O.F., codified in s. 112.1815, F.S.

- The “major contributing cause,” which must be shown by medical evidence only, based on physical examination findings and diagnostic testing, and “disablement,” which is a reduced earning capacity due to a compensable injury;
- The first responder’s spouse and living and unborn dependents at the time of the first responder’s disablement may receive death and other allowable benefits; however, death benefits are limited to deaths occurring within 350 weeks (6.73 years) of last witnessing a qualifying event causing the PTSD;
- There is no contribution of claim costs among current and former employers (i.e., only the employer at the time of the last qualifying event that caused or aggravated the PTSD is liable); and
- No benefits are due if, upon employment, the first responder falsely represented himself or herself in writing as not being previously disabled, laid off, or compensated because of PTSD.²¹

First responders qualify for PTSD disability benefits if the disorder can be demonstrated by clear and convincing evidence and the first responder:

- Was acting within the course and scope of employment; and
- Is diagnosed, following an examination by the employer’s or carrier’s authorized treating psychiatrist, with PTSD due to:
 - Seeing a deceased minor;²²
 - Directly witnessing²³ the death of a minor or an injury to a minor who subsequently died prior to or upon arrival at a hospital emergency department;
 - Participating in the physical treatment of or manually transporting²⁴ an injured minor who subsequently died prior to or upon arrival at a hospital emergency department;
 - Seeing someone who died due to grievous bodily harm of a nature that shocks the conscience;²⁵
 - Directly witnessing a death due to:
 - Grievous bodily harm of a nature that shocks the conscience, including suicide; or
 - Homicide, including murder, mass killing, manslaughter, self-defense, misadventure, or negligence;
 - Directly witnessing an injury, including an attempted suicide, to a person who suffered grievous bodily harm of a nature that shocks the conscience if the injured person subsequently died prior to or upon arrival at a hospital emergency department;
 - Participating in the physical treatment of an injury, including an attempted suicide, to a person who suffered grievous bodily harm of a nature that shocks the conscience if the injured person subsequently died prior to or upon arrival at a hospital emergency department; or
 - Manually transporting a person who was injured, including by attempted suicide, and suffered grievous bodily harm of a nature that shocks the conscience if the injured person subsequently died prior to or upon arrival at a hospital emergency department.²⁶

Notice Requirements

A first responder who suffers from PTSD must notify his or her employer within 90 days of the qualifying event, or the manifestation of the disorder, whichever is later.²⁷ If the compensability of an injury is

²¹ See ss. 112.1815(5)(a) and 440.151, F.S.

²² “Minor” includes any person who has not attained the age of 18 years. Section 1.01(13), F.S.

²³ “Directly witnessing” means to see or hear for oneself. Section 112.1815(5)(e)1., F.S.

²⁴ “Manually transporting” means to perform physical labor to move the body of a wounded person for his or her safety or medical treatment.” Section 112.1815(5)(e)2., F.S.

²⁵ The following injuries qualify as grievous bodily harm of a nature that shocks the conscience: decapitation; degloving; enucleation; evisceration; impalement; severance; third degree burns on nine percent or more of the body; and exposure of one or more of the following internal organs: brain; heart; intestines; kidneys; liver; or lungs. Rule 69L-3.009, F.A.C.

²⁶ Section 112.1815(5)(a), F.S.

²⁷ Section 112.1815(5)(d), F.S.

disputed, the first responder must file a petition for workers' compensation benefits within 52 weeks of the qualifying event.

A first responder who develops symptoms of PTSD after the one-year deadline for filing a claim has elapsed has no cause of action.²⁸

Posttraumatic Stress Disorder

According to the American Psychiatric Association, PTSD is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have been threatened with death, sexual violence, or serious injury.²⁹ Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.³⁰

Symptoms may begin shortly after the traumatic event, or may not appear until years after the event.³¹ Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.³²

Effects of the Bill

The bill amends both the timeframe in which a first responder must notify the employer of an injury and the timeframe in which a petition for workers' compensation benefits must be filed. Notice to the employer must occur within 90 days of a qualifying event or PTSD diagnosis, rather than the manifestation of the disorder, whichever is later. Under the bill, a petition for workers' compensation benefits is timely filed if filed within one year of a qualifying event or PTSD diagnosis of the disorder, whichever is later.

The bill extends medical and indemnity benefits to a correctional officer³³ with PTSD without requiring a link to a compensable physical injury. A correctional officer qualifies for PTSD-related benefits if the correctional officer:

- Was acting within the course and scope of employment; and
- Is diagnosed, following an examination by the employer's or carrier's authorized treating psychiatrist, with PTSD due to:
 - Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act;
 - Directly witnessing a death, including a death due to suicide, of a person who suffered grievous bodily harm of a nature that shocks the conscience;
 - Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
 - Participating in the physical treatment of an injury, or manually transporting a person who was injured, including by attempted suicide, who subsequently dies before or upon

²⁸ *Palm Beach County Fire Rescue v. Wilkes*, 309 So. 3d 687 (Fla. 1st DCA, 2020).

²⁹ American Psychiatric Association, *What is Posttraumatic Stress Disorder*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited February 9, 2022).

³⁰ Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-caused/syc-20355967> (last visited February 9, 2022).

³¹ *Id.*

³² Institutes of Health, *PTSD in First Responders*, <https://institutesofhealth.org/ptsd-in-first-responders/> (last visited February 9, 2022). See also Berkeley News, *Correctional Officers at high risk for depression, PTSD, suicide, survey finds*, <https://news.berkeley.edu/2018/08/23/california-correctional-officers-at-high-risk-for-depression-ptsd-and-suicide-new-survey-finds/> (last visited February 20, 2022).

³³ The bill defines "correctional officer" to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

- arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing,³⁴ manslaughter, self-defense, misadventure, and negligence; or
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.

The bill requires workers' compensation benefits for a correctional officer's PTSD be paid:

- If the PTSD is proven by clear and convincing medical evidence;
- Regardless of whether a physical injury occurred to the correctional officer;
- Without "apportionment" due to preexisting PTSD;
- Without limitation to the 1 percent cap on permanent psychiatric impairment benefits; and
- Provided, the first notice of injury is filed with the officer's employer or carrier within 90 days of the qualifying event or diagnosis of the PTSD; however, the claim is barred if not filed within one year of the qualifying event or the PTSD diagnosis, whichever is later.

The bill deems correctional officer PTSD an "occupational disease," which means that:

- Stand-alone correctional officer PTSD is treated and compensated as a workers' compensation injury (i.e., the correctional officer is entitled to medical and indemnity benefits);
- All practices and procedures of ch. 440, F.S., apply to the claim, except as otherwise provided;
- There is no "contribution" of claim costs among current and former employers (i.e., only the employer at the time of the last qualifying event that caused or aggravated the PTSD is liable); and
- No benefits are due if, upon employment, the correctional officer falsely represented himself or herself in writing as not being previously disabled, laid off, or compensated because of PTSD.

The bill also requires an employing agency of a correctional officer to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

Finally, the bill declares that it fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1 amends s. 112.1815, F.S., relating to firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2 creates s. 112.18155, F.S., relating to correctional officers; special provisions for posttraumatic stress disorders.

Section 3 creates an unnumbered section of law providing that the Legislature finds that the act fulfills an important state interest.

Section 4 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:

³⁴ The bill defines "mass killing" to mean three or more killings in a single incident.

Benefits for first responders employed by a state agency or state university are paid from the State Risk Management Trust Fund (SRMTF) administered by DFS. Since the law change in 2018, two claims have been processed for state employees qualifying for PTSD benefits. As of January 12, 2022, the Division of Risk Management has paid a combined total of \$200,000 for the two claims. Although DFS anticipates a potential increase in the number of compensable claims for PTSD benefits under the bill for first responders, DFS can likely absorb the costs within existing resources in the SRMTF.

The cost of providing PTSD benefits to correctional officers, however, may be significant, but is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By law, local governments are deemed to be self-insured for workers' compensation purposes. Local governments employ a large number of first responders (law enforcement officers, firefighters, EMTs). Consequently, their workers' compensation costs will increase, although the magnitude of the increase is unknown. According to DFS data, the cost of PTSD claims filed statewide (non-state employees) since 2018 is \$5.7 million.³⁵ The potential increase in claims filed due to the expanded time for notice of injury and notice of claim for first responders under the bill will have an indeterminate, but likely significant, negative fiscal impact on local governments.

Based on statewide claims data collected by DFS, a total of 350 workers' compensation claims were filed by first responders suffering from PTSD since the legislation took effect in October 2018. There was no accompanying physical injury for 50 claims; in those instances, the average cost per claim is \$42,326.

Statewide PTSD Claims Data			
Claims	Indemnity	Medical	Total Cost
350	\$2,564,817	\$3,148,275	\$5,713,092

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the bill generates an increase in compensable workers' compensation claims, physicians who are authorized providers could experience an increase in patients and insurance carriers could experience an increase in claims. Private employers who employ first responders or correctional officers and secure their workers' compensation coverage through an insurance carrier may experience an increase in their respective premiums due to the increase in workers' compensation costs for first responders and correctional officers.³⁶ The fiscal impact is indeterminate, but could be significant.

D. FISCAL COMMENTS:

Expanding PTSD benefits to correctional officers and providing a point of entry that is tied to the date of diagnosis, rather than the manifestation of PTSD, likely would lead to an increase of compensable claims. The number of additional claims that could be filed under the bill is unknown at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³⁵ Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: PTSD Data (Jan. 12, 2022), on file with the Government Operations Subcommittee.

³⁶ See Department of Financial Services (DFS), Agency Analysis of 2022 Senate Bill 1066, p. 3 (Dec. 22, 2021), on file with the Government Operations Subcommittee.

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill provides PTSD benefits to correctional officers and would permit compensation claims for first responders and correctional officers long after a qualifying event and likely lead to an increase in compensable claims. An exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because the bill applies to similarly situated state and local government employers of first responders and correctional officers and the bill provides an important state interest determination.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to adopt rules related to correctional officer PTSD benefits to specify injuries that qualify as grievous bodily harm.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2022, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in that it extended the PTSD-related workers' compensation benefits that were previously limited to first responders to correctional officers, and specified the qualifying events applicable to correctional officers. The PCS also added a legislative finding of important state interest.

This analysis is drafted to the committee substitute adopted by the State Affairs Committee.