

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 Banking and Insurance

BILL: SB 1210

INTRODUCER: Senator Book

SUBJECT: Ratification of Rules of the Department of Financial Services

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1210 ratifies Rule 64L-3.009, F.A.C., adopted by the Department of Financial Services (DFS).

Chapter 2018-124, Laws of Florida, allows a first responder to recover wage replacement benefits under the Workers' Compensation Law for posttraumatic stress disorder (PTSD) without an accompanying physical injury if the PTSD resulted from the first responder acting within the course of his or her employment and the first responder is examined and subsequently diagnosed with the disorder by a licensed psychiatrist. The PTSD must be due to specified events, including events that involve witnessing "grievous bodily harm of a nature that shocks the conscience." Chapter 2018-124, Laws of Florida, did not define "grievous bodily harm of a nature that shocks the conscience" and directed the DFS to adopt a rule defining the phrase.

The DFS filed the rule for adoption on December 5, 2018. The Statement of Estimated Regulatory Costs (SERC) developed by the DFS determined that the proposed rule will likely increase regulatory costs in excess of \$1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect. This bill ratifies the rule.

II. Present Situation:

Rulemaking and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.¹ Rulemaking authority is delegated by the Legislature to an agency in law, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.² An agency may not

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

engage in rulemaking unless it has a legislative grant of authority to do so.³ The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register (F.A.R.).⁵ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule;
- A summary of the agency's SERC, if one is prepared; and
- Whether legislative ratification is required.⁶

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 in the aggregate within 1 year after implementation of the rule.⁷

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁸

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,⁹ productivity, or innovation; or
- Regulatory costs, including any transactional costs.^{10,11}

³ See ss. 120.52(8) and 120.536(1), F.S.

⁴ See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁵ Section 120.54(3)(a)2., F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ Sections 120.54(3)(b) and 120.541(1)(b), F.S.

⁸ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less. See ss. 120.52(18), (19), and 288.703(6), respectively.

⁹ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹⁰ Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.

¹¹ Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹²

Chapter 2018-124, Laws of Florida

Chapter 2018-124, Laws of Florida, became law on October 1, 2018. It allows a first responder¹³ to recover wage replacement benefits under the Workers' Compensation Law for PTSD¹⁴ without an accompanying physical injury if the PTSD resulted from the first responder acting within the course of his or her employment and the first responder is examined and subsequently diagnosed with the disorder by a licensed psychiatrist. The PTSD must be due to one of the following events:

- Seeing for oneself a deceased minor;
- Directly witnessing the death of a minor;
- Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;
- Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a death, including suicide, that involved 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 as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently died 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, including an attempted suicide, to a person who subsequently died 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; or
- Manually transporting a person who was injured, including by attempted suicide, and subsequently died 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.

¹² Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

¹³ Section 112.1815(1), F.S., defines "first responder" as "a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section."

¹⁴ PTSD psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat, rape or other violent personal assault. *See* <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited March 22, 2019).

The law does not define, “grievous bodily harm of a nature that shocks the conscience.” Instead, it required the DFS to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience.

Rule 69L-3.009, Florida Administrative Code

On December 5, 2018, the DFS filed the rule for adoption. The rule states:

Pursuant to s. 112.1815(5), F.S., for purposes of determining the compensability of employment-related post-traumatic stress disorder for first responders, the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:

- (1) Decapitation (full or partial),
- (2) Degloving,
- (3) Enucleation,
- (4) Evisceration,
- (5) Exposure of one or more of the following internal organs:
 - (a) Brain,
 - (b) Heart,
 - (c) Intestines,
 - (d) Kidneys,
 - (e) Liver, or
 - (f) Lungs.
- (6) Impalement,
- (7) Severance (full or partial), and
- (8) Third degree burn on 9 percent or more of the body.

The DFS prepared a Statement of Estimated Regulatory Costs:

There are approximately 250,000 work-related injuries reported to the Division of Workers’ Compensation annually. This rule will add indemnity benefits for first responders as defined in section 112.1815, F.S., with an eligible PTSD claim. Currently, medical only treatment is available for first responders experiencing a work related mental health issue. First responder claims represent 6.5-7 percent of all lost-time claims. Between 2012 and 2018, the Division identified 35,420 accidents that included the class code of a first responder. The total cost (indemnity plus medical) of these claims as of (May 2018) is \$8,615,314,959.72 (average cost per claim is \$243,233.06) over the life of the claims. Of these first responder claims where a physical injury occurred, 134 claims had a secondary diagnosis of PTSD in the medical bill data, or 0.4 percent of all first responder claims.

Across all claims occurring in the State of Florida, indemnity benefits represent approximately 27-30 percent of the total cost of a claim. Using the average cost per first responder claim of \$243,233.06, the indemnity costs represented in this figure are between \$65,672 and \$72,969 per claim over the life of the claim up to 5 years of data presented. If claims are reported and compensable for the

0.4 percent of first responder population, a range of \$8.8 to 9.7 million dollars would be expected over the next 5 years of claim development.¹⁵

The DFS SERC did not separate the costs that would be imposed by the statute from the costs that would be imposed specifically by the rule.

III. Effect of Proposed Changes:

The bill ratifies Rule 69L-3.009, F.A.C., entitled “Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience” for the sole and exclusive purpose of satisfying any condition of effectiveness imposed under s. 120.541(3), F.S.

The bill also:

- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect, preempt any challenge on lack of authority, or cure any violation of the legal requirements governing rule adoption.

The act is effective upon becoming a law. At that time, the rule becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹⁵ Department of Financial Services, *Analysis of SB 1210* (February 22, 2019) (on file with the Committee on Banking and Insurance).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Most of the impact on the government sector will be caused by the ch. 2018-124, Laws of Florida, requirement that workers' compensation benefits be paid for more PTSD claims. Without the rule, it would take litigation to determine the meaning of "grievous bodily harm of a nature that shocks the conscience." The rule might have the effect of reducing the number of paid claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None. The bill specifically provides that it is not to be codified in the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.