

STORAGE NAME: h0087c.in
DATE: October 7, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 87
RELATING TO: Workers' compensation
SPONSOR(S): Representative Fasano
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 10 NAYS 1
 - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under current Florida law, workers' compensation only covers an employee's injury if the injury arises out of and occurs within the course and scope of employment. An employee is not considered to be acting within the course and scope of employment when "going to or coming from" work, unless engaged in a special errand or mission for the employer (this is known as the "going or coming" rule). Law enforcement officers now enjoy a limited exception to the "going or coming" rule when injured while carrying out their "primary responsibility" to prevent or detect crime or enforce the penal, criminal, traffic, or highway laws of the state. They are deemed by operation of s. 440.091, F.S., to have been injured within the course of employment, and therefore are covered by workers' compensation.

This bill broadens the circumstances in which law enforcement officers are considered to be acting within the course and scope of employment and, accordingly, covered by workers' compensation by creating an additional statutory exception to the "going or coming" rule. The bill provides that a law enforcement officer going to or coming from work in an official law enforcement vehicle is deemed to be engaged in a special errand or mission for the employer, such that injuries are covered by workers' compensation.

Since the bill provides workers' compensation coverage for injuries that previously may not have been covered by workers' compensation, the bill may change the manner in which medical benefits are delivered to law enforcement officers injured while going to or coming from work in an official vehicle.

Since the current policy of the state is to cover state employees for injuries suffered while driving a state car to or from work, this bill would not change current practice for state law enforcement officers. In addition, to the extent local law enforcement agencies have a similar policy, this bill would not change current practice for local law enforcement officers. Further, because of the state's current policy, the bill will not have any fiscal impact on the state. The bill is expected to have an indeterminate fiscal impact on local governments to the extent they do not have a policy similar to the state.

Amendments

On October 5, 1999, the Committee on Insurance adopted one amendment, which is traveling with the bill. For an explanation, refer to the Amendments section of the analysis.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill would require employers of law enforcement officers to provide workers' compensation coverage for a situation that is currently not required to be covered.

B. PRESENT SITUATION:

Pursuant to chapter 440, the workers' compensation system provides indemnity and medical benefits to injured employees. In order for an employee to be entitled to workers' compensation benefits, the law requires that the injury "arise out of" and be in the course and scope of the employment.

"Arising Out Of" the Employment

According to s. 440.02(32), F.S., an injury is deemed to arise out of employment "if work performed in the course and scope of employment is the major contributing cause of the injury." Id. Much litigation in workers' compensation has been devoted to the issue of whether an injury arose out of and occurred in the course and scope of employment. The First District Court of Appeal stated that in order to establish that an accident arose out of, and occurred in the course and scope of, the employment, it is "sufficient for the claimant to prove that her injury occurred in the period of her employment, at a place where she would reasonably be, while fulfilling her duties." Hillsborough County School Board v. Williams, 565 So.2d 852, 853-54 (Fla. 1st DCA 1990)

Going or Coming Rule

According to Florida law, if an injury is suffered while going to or coming from work, the injury is not one which arises out of and in the course of employment. Section 440.092(2), F.S. However, if the employee was engaged in a "special errand or mission" for the employer while going to or coming from work, the injury is deemed to arise out of and in the course of employment.

Florida courts have stated that an employee is on a special errand if the journey was a substantial part of the service performed for the employer. D.C. Moore & Sons v. Wadkins, 568 So.2d 998 (Fla. 1st DCA 1990). Courts have held that an employee is on special errand where the employee is instructed by the employer to perform a special errand which grows out of and is incidental to his employment. Bruck v. Glen Johnson, Inc., 418 So.2d 1209, 1211 (Fla. 1st DCA 1982). A typical "special errand" exists when the employer calls

the employee at home, and instructs him to deviate from his normal route into work to pick up an item needed for the purposes of employment that day. See *Spartan Food Systems & Subsidiaries v. Hopkins*, 525 So.2d 987 (Fla. 1st DCA 1988) (Employee directed to pick up drink cups on way into work).

When Law Enforcement Officers Are Within the Course of Employment

Section 440.091, F.S., is a special provision relating to officers vested with the authority to bear arms and make arrests, which sets forth the circumstances under which such officer is deemed to be in the course and scope of employment. This provision creates a limited exception to the "going or coming" rule for these officers. Pursuant to this section, if an employee:

- is elected, appointed, or employed full time by a municipality, the state, or any political subdivision, is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention or detection of crime or the enforcement of penal, traffic, or criminal laws of the state;
- was discharging that primary responsibility within the state; and
- was not engaged in services for a private employer;

the employee is deemed to have been acting in the course and scope of employment, regardless of whether he or she is going to or coming from work. If an officer meets these three criteria and is injured, he or she will be covered by workers' compensation.

Deviations from Employment

Under s. 440.092(3), F.S., employees who are injured while deviating from the course of employment are generally not eligible for benefits.

Case Law Relating to Law Enforcement Officers

Cases construing s. 440.091, F.S., focus on whether the officer was discharging his or her "primary responsibility" at the time of the accident. See e.g., *Palm Beach County Sheriff's Office v. Ginn*, 570 So.2d 1059 (Fla. 1st DCA 1990) (although an officer is on call for duty and has police radio and other indicia of authority, these factors are not dispositive; the issue is whether the officer was carrying out his "primary responsibility").

In *Hanstein v. City of Fort Lauderdale*, 569 So.2d 493 (Fla. 1st DCA 1990), for example, a patrol officer was on his way to work in his personal vehicle when he observed a truck making an improper turn. The officer testified that he made a "conscious decision" to issue a citation for the violation, but before he could do so, his vehicle was struck by the truck. Because department policy prohibited an officer from issuing a citation for an accident in which the officer is involved, the officer could not issue a citation. The court held that although the officer did not actually take affirmative action, the officer was performing his primary responsibility because his responsibilities included enforcement of traffic laws. Id. at 494. As such, the officer's injuries were covered by workers' compensation.

However, in *City of Fort Lauderdale v. Abrams*, 561 So.2d 1294 (Fla. 1st DCA 1990) a forensic detective was on her way to work in her personal vehicle when she was struck from behind at a red light. *Abrams*, 561 So.2d at 1294. Because the forensic detective was not investigating a crime or enforcing the law when she was struck from behind, the court

stated that she was not carrying out her primary responsibility. As a result, the court held the injury did not arise out of or within the course and scope of her employment. Id. This detective's injuries were not covered by workers' compensation.

In City of Lakeland v. Schiel, 687 So.2d 1323 (Fla. 1st DCA 1997), an on-duty Special Investigation Division (SID) officer driving an unmarked vehicle was denied workers' compensation benefits when he was struck by a van while checking on his daughter who had just been in a car accident. Because it was not protocol for SID officers to investigate traffic accidents, the court held that claimant was on a "personal errand at the time of his injury and was not acting within the course or scope of his employment or discharging the duties of a law enforcement officer." Id. at 1324.

Law Enforcement Officers' Duty to Act

There is no provision in Florida law which places a legal obligation on law enforcement officers to take affirmative action when they are off-duty. However, inquiries by staff to several law enforcement agencies (Sheriff and Police Departments) indicate that most law enforcement agencies, through internal policy, require their officers to be "on-duty" 24 hours a day. These law enforcement officers, who have the authority to make arrests when off-duty, would have a responsibility to take reasonable affirmative action any time they witness a criminal act.

State Policy Regarding State Employees with State Cars

Florida law provides that injuries suffered by an employee while going to or coming from work are not injuries arising out of and in the course of employment, "whether or not the employer provided transportation if such means of transportation was available for the *exclusive personal use* by the employee." Section 440.092(2), F.S. (emphasis added).

Many state employees, including state law enforcement officers (e.g., Florida Highway Patrol, Florida Department of Law Enforcement), are provided state cars. However, state cars are not available for the state employee's "exclusive personal use" -- they may only be driven to and from an employee's home and only when used for specific purposes.¹ Accordingly, the current policy of the Department of Insurance, Division of Risk Management (the state agency responsible for workers' compensation for state employees), is that an injury suffered by a state employee while driving in a state car to or from work is an injury arising out of and in the course of employment. Thus, state law enforcement officers injured while driving to or from work in a state vehicle are covered by workers' compensation regardless of whether the officer was engaging in his or her primary responsibility.

C. EFFECT OF PROPOSED CHANGES:

The circumstances in which a law enforcement officer is deemed to be acting within the course and scope of employment would be broadened. Law enforcement officers going to and coming from work in an official law enforcement vehicle would be deemed to be engaging in a special errand or mission and, therefore, would be covered by workers' compensation.

The effect of the bill is best illustrated in the following hypothetical:

¹ See Rule 60B-1.008(2), Florida Administrative Code.

A deputy sheriff is off duty and on the way home. While stopped at a stop light 2 blocks from home, the deputy sheriff is injured when a car struck the rear of his vehicle. As a fringe benefit of his employment, the deputy sheriff had been provided with a sheriff's office vehicle, which he is allowed to use on personal business and which he was using at the time of the accident. Prior to the accident, the deputy sheriff had been monitoring the police radio in the vehicle, in the event that he might be called on duty to assist with some law enforcement matter. Additionally, the deputy sheriff is a member of the sheriff's office emergency field force, which requires him to possess and monitor a beeper at all times, which he was monitoring at the time of the accident.

Is the law enforcement officer's injury covered by workers' compensation?

Current Law - Probably No

Under current law, the relevant issue in this hypothetical would be whether the law enforcement officer was carrying out his primary responsibility which is the "prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state." The First District Court of Appeal has held in several cases with similar facts that the law enforcement officer was not carrying out his or her primary responsibility, and therefore was not acting within the course and scope of employment. Thus, it is probable that the deputy sheriff would not recover workers' compensation benefits.

The Bill - Yes

Under the bill, the relevant issue is whether the employee is a law enforcement officer as defined in s. 943.10(1), F.S., and whether the employee is going to or coming from work in an official law enforcement vehicle. There presumably would be no inquiry into whether the law enforcement officer is carrying out his or her primary responsibility. As such, because the deputy sheriff is a law enforcement officer and because he was coming from work in a law enforcement vehicle, he would be covered by workers' compensation.

Since the current policy of the state is to cover state employees for injuries suffered while driving a state car to or from work, this bill would not change current practice for state law enforcement officers. In addition, to the extent local law enforcement agencies have a similar policy, this bill would not change current practice for local law enforcement officers.

The bill could change how medical benefits are provided to law enforcement officers injured while going to or coming from work in an official law enforcement vehicle. Under the bill, such law enforcement officers would receive medical benefits through the employer's workers' compensation insurer instead of the employer's health insurer -- which would require a determination that the injury was caused by the accident and, possibly, require the use of a different network of physicians.

Finally, the bill may or may not have any effect on law enforcement officers in official law enforcement vehicles injured while deviating from their route to or from work -- i.e., while going to a friend's house on the way home. See the Comments section of the analysis for further discussion.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. See Fiscal Comments.

2. Expenditures:

None. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill extends workers' compensation coverage to law enforcement officers for accidents that previously were not covered by workers' compensation. Therefore, this bill may result in an increase in the premiums for workers' compensation coverage. Additionally, since most local law enforcement agencies offer health insurance to their officers (and some offer disability insurance), then presumably medical and disability benefits for accidents going to and coming from work will be paid for through workers' compensation instead of health and disability insurance. Therefore, this bill may also result in a shifting of some costs from their health and disability insurance policy to workers' compensation insurance. The amount of increased premium and the extent of the cost shifting is indeterminate because it is not known how many additional claims would result from the increased availability for workers' compensation coverage created by this bill.

Further, the fiscal impact of this bill is also indeterminate because it is possible that local governments, fearing potential increased costs, could discontinue the practice of allowing officers to drive official vehicles to their homes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

Because of the current policy of the Department of Insurance, Division of Risk Management to provide workers' compensation coverage to state employees for injuries suffered while driving a state car to or from work, this bill would not change current practice state law enforcement officers, which would include Florida Highway Patrol and Florida Department of Law Enforcement officers.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

It is possible the bill could result in a city or county having to spend funds. However, whether an expenditure would be required and whether the amount of such expenditure would be significant is indeterminate. Since it may already be the policy of some cities or counties to provide coverage for law enforcement officers when in official vehicles, the bill may not require the expenditure of any funds. In addition, since it is not known how many more workers' compensation claims would arise because of the bill, the potential increase in workers' compensation premium for cities and counties cannot be determined.

However, even if the bill required cities and counties to spend funds, the bill may qualify for the exception relating to laws that apply to all persons similarly situated, including state and local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill is identical to HB 4179, 1st Engrossed, which passed the House in the 1998 session, and HB 215 (as amended in the Insurance Committee) from the 1999 session which passed the Committees on Insurance, Law Enforcement and Crime Prevention, and Transportation and Economic Development Appropriations before dying on the House floor.

Understanding the intent of the bill to be to provide workers' compensation coverage to law enforcement officers who are injured in an official vehicle while going to or coming from work -- and not to officers who deviate from their route going to or coming from work -- the bill may require an amendment to accomplish this intent. The bill deems law enforcement officers going to or coming from work in law enforcement vehicles to be engaged in a "special mission" for the employer. Under Florida law, the "going or coming" rule does not apply to those employees engaging in a "special mission." Thus, this bill could be interpreted to mean that law enforcement officers are engaged in a "special mission" whenever they are in a law enforcement vehicle and, therefore, are covered regardless of

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where they are going to or coming from in the law enforcement vehicle. [This issue has been addressed in Amendment 1 adopted in the Committee on Insurance. See Amendments section of the analysis.]

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On October 5, 1999, the Committee on Insurance adopted one amendment (which is traveling with the bill) which addresses the concern raised in Section V. of the analysis that the bill, as drafted, could be construed broadly enough to provide workers' compensation coverage to law enforcement officers in their official vehicles without regard to where they were going or what they were doing.

Amendment 1 by Representative Fasano (Page 1, lines 24 -28) narrows the bill so that it would not extend workers' compensation coverage to law enforcement officers who make a distinct departure from their route to and from work for nonessential personal errands.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge