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HOUSE OF REPRESENTATIVES

COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: HB 1055

RELATING TO: Workers' Compensation

SPONSOR(S): Representative Needelman

TIED BILL(S):

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

(1) INSURANCE YEAS 13 NAYS 0
(2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 12 NAYS 0
(3) COUNCIL FOR COMPETITIVE COMMERCE
(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.

This bill broadens the circumstances in which law enforcement officers are considered to be acting within the course and scope of employment 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, during an assigned work schedule, in an official law enforcement vehicle is engaged in a special errand or mission for the employer, such that injuries would be covered by workers' compensation.

The bill does not change current practice for state law enforcement officers, and therefore has no fiscal impact on state government. The fiscal impact on local governments depends on the extent to which local practices follow current state practices.

The bill takes effect upon becoming a law.

Two amendments are traveling with the bill:

Traveling amendment by the Committee on Insurance: Applies the bill to law enforcement officers as defined in s. 943.10(1) only, thereby excluding applicability to correctional officers or correctional probation officers.

Traveling amendment by the Committee on Criminal Justice Appropriations: Incorporates the Insurance Committee amendment (described above); also excludes coverage for injuries that occur "during a distinct deviation for a non-essential personal errand," unless the employer's policy or an applicable collective bargaining agreement permits such deviations for non-essential errands.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

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 sprung from the issue of whether or not 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.[1] 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.

[1] Section 440.092(2), F.S.

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 that 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. 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, during an assigned work schedule, 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:

> 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 strikes 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. 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 during an assigned work schedule. 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 -- e.g., 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.

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 are not currently covered by workers' compensation. Therefore, this bill may result in increased premiums for workers' compensation coverage due to an increase in the number of claims. The number of additional claims and resulting increase in premiums is indeterminate due to data limitations. Similarly, any offset to increased workers' compensation costs due to decreased utilization of health insurance benefits is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

Because current policy of the Department of Insurance, Division of Risk Management is 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 for state law enforcement officers, which would include Florida Highway Patrol, Florida Department of Law Enforcement officers and other state law enforcement officers.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

As noted above, the bill could result in a city or county having to spend funds if an increased number of workers' compensation claims results in higher premiums. The amount, however, is indeterminate due to data limitations. Unless the impact exceeds $1.6 million, the exemption for insignificant fiscal impact contained in Article VII, Section 18 of the Constitution would apply. In addition, because the bill applies to all similarly situated employees in governmental units other than cities and counties, if the Legislature determines an important state interest, the bill will meet the exception to the mandates provisions of Article VII, Section 18 of the state Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill would qualify the applicability of the provision to when a law enforcement officer is going to or coming from work "during an assigned work schedule." While this qualification addresses injuries that occur while a law enforcement officer is in a law enforcement vehicle for purposes other than their assigned work schedule, it does not address route deviations that occur while going to or coming from work during their assigned work schedule (i.e., to stop at a friend's home) or at what point the law enforcement officer is no longer going to or coming from work (e.g., is the officer still coming from work after stopping for some time at the friend's home?). Also, the term "during" implies a period between the beginning and end of an assigned work schedule. Strictly construed, this term may exclude travels to and from work that are outside of the expressly assigned duty schedule.

Law enforcement officers who are injured while in an official law enforcement vehicle (marked or unmarked) who are injured at a time when they are not going to or coming from work during an assigned work schedule would still be covered by workers' compensation if they meet the test of s. 440.091, F.S. (i.e. if they were discharging their "primary responsibility).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Traveling amendment by Committee on Insurance:
On April 4, 2001, the Committee on Insurance adopted the following amendment by Rep. Needelman (page 1, line 22): The amendment would narrow the definition of "officer" so that the bill only applies to law enforcement officers and not correctional officers and correctional probation officers.

Traveling amendment by Committee on Criminal Justice Appropriations:
On April 11, 2001, the Criminal Justice Appropriations Committee adopted an amendment by Rep. Needleman that is traveling with the bill. This amendment provides that law enforcement officers driving to and from work in an official law enforcement vehicle are to be covered by workers' compensation unless they deviate for non-essential personal errands. The amendment further provides that officers will be covered by workers' compensation, even if they deviate for non-essential personal errands, if their department policy or collective bargaining agreement allows them to use a law enforcement vehicle for non-essential personal errands.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Eric Lloyd	Stephen T. Hogge

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:	Staff Director:
James P. DeBeaugrine	James P. DeBeaugrine

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:	Staff Director:
Leonard Schulte	Hubert "Bo" Bohannon