

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 Commerce and Tourism

BILL: CS/SB 376

INTRODUCER: Banking and Insurance Committee and Senator Book and others

SUBJECT: Workers' Compensation Benefits for First Responders

DATE: January 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 376 revises workers' compensation standards for determining benefits for employment-related mental or nervous injuries of law enforcement officers, firefighters, emergency medical technicians, paramedics, and first responders. Generally, the bill will increase the likelihood of compensability for workers' compensation indemnity benefits for mental or nervous injuries of first responders delineated in s. 112.1815, F.S., or post-traumatic stress disorder (PTSD) of law enforcement officers, firefighters, emergency medical technicians, or paramedics described in s. 440.093, F.S.

PTSD is a 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. A diagnosis of PTSD requires direct or indirect exposure to an upsetting traumatic event.

Currently, for non-first responders, a mental or nervous injury must be accompanied by a physical injury requiring medical treatment to be compensable under the workers' compensation law in ch. 440, F.S. Therefore, the physical injury must be severe enough to warrant such treatment in order for any psychiatric injury to be compensable. Section 112.1815, F.S., currently provides that the physical injury requirement for compensability of mental or nervous injuries does not apply to first responders for the payment of medical benefits, but a compensable physical injury is required for a first responder to recover indemnity benefits.

The bill revises eligibility and benefits for mental and nervous injuries involving first responders and occurring as a manifestation of a compensable injury, as provided in s. 112.1815, F.S., by providing for the payment of indemnity as well as the current medical benefits for mental or nervous injuries unaccompanied by a physical injury. Such a mental or nervous disorder must be demonstrated by a preponderance of evidence. Currently, the evidentiary standard is clear and convincing evidence.

Further, the bill authorizes the payment of medical and indemnity benefits pursuant to ch. 440, F.S., to a law enforcement officer, firefighter, emergency medical technician, or paramedic who experiences PTSD unaccompanied by a physical injury if all of the following conditions are met:

- The mental or nervous injury resulted while the law enforcement officer, firefighter, emergency medical technician, or paramedic was acting within the scope of employment and the person witnessed a murder, suicide, fatal injury, child death, or arrived on a scene of a mass casualty incident; and
- The mental or nervous injury is demonstrated by a preponderance of evidence by a licensed psychiatrist to meet the criteria for PTSD as described in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

The bill may have an indeterminate negative fiscal impact on state and local governments.

II. Present Situation:

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.¹ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,² or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.³

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.⁴ An accidental compensable injury must be the major contributing cause of any resulting injury, 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.⁵ An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee.⁶

¹ Section 440.09(1), F.S.

² Section 440.38, F.S.

³ Section 627.311(5)(a), F.S.

⁴ "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.

⁵ Section 440.09(1), F.S.

⁶ Section 440.02(1), F.S.

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than 6 months after the employee reaches maximum medical improvement.

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.⁷

Indemnity benefits only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.⁸ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),⁹ up to the maximum weekly benefit established by law.¹⁰ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.¹¹
- 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.¹²
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for 5 years.¹³

Section 440.15(3), F.S., provides that permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

⁷ Section 440.13(2)(a), F.S.

⁸ Section 440.12(1), F.S.

⁹ An injured workers' 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 accident pursuant to s. 440.14(1), F.S.

¹⁰ Section 440.15(1)-(4), F.S.

¹¹ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

¹² Section 440.15(3), F.S.

¹³ Section 440.15(1), F.S.

First Responders' Compensability for Mental or Nervous Injuries

In 2007, the Legislature enacted significant changes in workers' compensation benefits for first responders that provide benefits and standards for determining benefits for employment-related accidents and injuries of first responders. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,¹⁴ a firefighter as defined in s. 633.102, F.S.,¹⁵ or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,¹⁶ employed by state or local government.¹⁷ Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.¹⁸

In regards to compensability for a mental or nervous injury involving a first responder, s. 112.1815, F.S.:

- Requires that a mental or nervous injury occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence;
- Authorizes the payment of only medical benefits in employment-related cases involving a mental or nervous injury without an accompanying physical injury requiring medical treatment;
- Prohibits the payment of indemnity benefits unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury; and
- Provides that benefits for first responders are not subject to any limitation on temporary benefits under s. 440.93, F.S., or the one percent limitation on permanent psychiatric impairments benefits under s. 440.15, F.S.

State Survey of Compensability Laws for Workers' Compensation Mental Injuries

Often stress-related injuries do not result from a physical injury. These types of injuries are referred to as "mental-mental" injuries because they are caused by a purely mental stimulus that leads to a mental impairment, such as depression or post-traumatic stress disorder. This stimulus could be witnessing, but not being physically injured by, a particularly horrific accident, workplace incident, or crime scene.

¹⁴ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁵ "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.

¹⁶ "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.

¹⁷ Chapter 2007-1, Laws of Fla.

¹⁸ Section 112.1815, F.S.

In 2017, the National Council on Compensation Insurance (NCCI) issued a report summarizing compensability for injuries¹⁹ in the United States.²⁰ Highlights of the study include:

- **Compensability for Mental-Mental Injuries:** 27 jurisdictions, including Florida, have statutory language expressly allowing compensation for nonphysical mental (mental-mental) injuries or stress in limited circumstances.²¹
- **Mental-Mental and Mental-Physical Exclusions:** Montana is the only state that specially denies compensability for both mental-physical and mental-mental injuries.
- **Personnel Actions:** 21 states specify that stress arising out of a personnel action is not compensable.

Another report noted that some states provide compensability for mental-mental injuries, but only if the stimulus is “unusual.”²² In those states, the term “unusual” generally means unusual for a typical person holding the particular job. Other states were noted that provide compensability for mental-mental injuries, but only if the mental stimulus is sudden.

Post-Traumatic Stress Disorder

The American Psychiatric Association provides diagnostic criteria for mental disorders, which includes post-traumatic stress disorder (PTSD) in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*.²³ PTSD is a 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.²⁴ A diagnosis of PTSD requires exposure to an upsetting traumatic event. However, exposure could be indirect rather than first hand.²⁵ Symptoms generally begin within the first 3 months after the trauma, although there may be a delay of months or even years, before the criteria for the diagnosis are met.²⁶

The exact prevalence rate for PTSD is difficult to ascertain. According to the National Center for PTSD, about 7 or 8 percent of the population will have PTSD at some point in their lives.²⁷ About 8 million adults will have PTSD during a given year. About 10 percent of females develop PTSD during their lives compared with about 4 percent of males. The number of veterans with PTSD varies by service era. For example, about 15 percent of Vietnam veterans are diagnosed

¹⁹ Reference to mental injuries also includes mental impairments or disorders that are occupational diseases. The District of Columbia and Kansas laws do not expressly provide for compensation of mental injuries, but they do reference mental conditions and/or mental providers.

²⁰ NCCI, *Compensability for Workers' Compensation Mental Injuries* (2017) (on file with Senate Banking and Insurance Committee).

²¹ Typically, compensable mental-mental injuries must be considered extraordinary and the predominate or substantial contributing cause.

²² Donald DeCarlo and Roger Thompson, *Workers' Compensation Benefits for Post-Traumatic Stress Disorder*, Insurance Advocate (Jul. 24, 2017) (on file with Senate Banking and Insurance Committee).

²³ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, (5th, 2013). Commonly referred to as DSM-5.

²⁴ See American Psychiatric Association, *What is Posttraumatic Stress Disorder?* (Jan. 2017) (on file with Senate Banking and Insurance Committee).

²⁵ *Id.*

²⁶ DSM-5, *supra*, note 25 at 276.

²⁷ National Center for PTSD, *How Common is PTSD?* Available at: <https://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp> (last visited Jan. 12, 2018).

with PTSD at the time of the most recent study conducted in the late 1980s. It is estimated that 30 percent of Vietnam veterans have had PTSD in their lifetime. In contrast, about 12 percent of Gulf War veterans have PTSD in a given year.

The DSM-5 estimates approximately 8.7 percent of the U.S. population will develop PTSD in their lifetime.²⁸ Twelve-month prevalence among U.S adults is approximately 3.5 percent. The PTSD rates are higher among veterans and others whose employment increases the risk of traumatic exposure, such as police, firefighters, and emergency medical personnel. The highest rates (ranging from one third to more than one half of those exposed) are found among survivors of rape, military combat and captivity, and ethnically or politically motivated internment and genocide.

Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.²⁹ A 2016 report estimated 20 percent of firefighters and paramedics had PTSD.³⁰ Preexisting mental health conditions may be exacerbated and new mental health conditions may occur due to extremely emotionally and physically demanding working conditions.³¹ A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.³² Concern has been expressed that first responders may underreport mental health conditions as a result of stigma associated with seeking treatment for those conditions.

2016 Pulse Shooting in Orlando, Florida

On June 12, 2016, 49 people were killed and at least 68 others were injured at a shooting at the Pulse nightclub in Orlando, Florida. The shooting has been characterized as one of the deadliest mass shootings in modern U.S. history.³³ One recently profiled police officer was diagnosed with post-traumatic stress disorder and has been out of work since shortly after the shooting.³⁴ The article noted that, while the City of Orlando Police Department was paying his full salary, Florida law did not require the employer to pay because workers' compensation compensability for PTSD must be accompanied by a physical injury, which the officer did not have.

²⁸ DSM-5, *supra*, note 25, at 276.

²⁹ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

³⁰ EMS1.com News, *New study estimates 20 percent of firefighters and paramedics have PTSD* (Aug. 17, 2017) (on file with Senate Banking and Insurance Committee).

³¹ Johns Hopkins Public Health Preparedness Programs, *First Responders, Mental Health Services, and the Law* (Apr. 25, 2013) (on file with Senate Committee on Banking and Insurance Committee).

³² FireRescue News, *Increasing suicide rates among first responders spark concerns* (Mar. 19, 2017) (on file with Senate Committee on Banking and Insurance Committee).

³³ CBS News, *Report reveals dramatic new details from Orlando nightclub massacre*, (Apr. 14, 2017) available at <http://www.cbsnews.com/news/orlando-nightclub-shooting-report-reveals-new-details-inside-pulse/> (last visited Jan. 12, 2018).

³⁴ Orlando Sentinel, *Proposed bills would cover first responders who have PTSD* (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

Florida Retirement System

The Florida Retirement System (FRS)³⁵ offers members a choice between the Pension Plan (a defined benefit plan) and the Investment Plan (a defined contribution plan). Generally, FRS membership is compulsory for employees filling a regularly established position in a state agency, county agency, state university, state college, or district school board with some limited exceptions. Participation by cities, municipalities, special districts, charter schools, and metropolitan planning organizations, although optional, is generally irrevocable after the election to participate is made. The five classes of membership are Regular Class, Senior Management Service Class, Special Risk Class, Special Risk Administrative Support Class, and Elected Officers' Class.

Special Risk Class of the FRS

The Special Risk Class is composed of state and local government employees who are employed in certain categories of law – enforcement officers, firefighting, criminal detention, and emergency medical care – and meet the criteria to qualify for this class.³⁶ A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members. In creating the Special Risk Class of membership within the FRS, the Legislature recognized that certain employees, as an essential function of their positions, must perform work that is physically demanding or that requires extraordinary agility and mental acuity.³⁷ The Legislature further found that, as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.

Disability Benefits for Members of the FRS

The FRS provides disability benefits for its active members who are permanently, totally disabled from useful employment. The level of disability benefits to which an eligible disabled member is minimally entitled depends upon membership class, and whether the disabling injury or illness was job related. For Special Risk Class members retiring on or after July 1, 2000, the minimum in-line-of-duty disability benefit is 65 percent of average final compensation (AFC) as of the member's disability retirement date.

Section 121.091(4), F.S., provides that any FRS³⁸ member who is totally and permanently disabled due to a condition or impairment of health caused by an injury or illness (including tuberculosis, heart disease, or hypertension) is entitled to disability benefits. The disabling injury or illness must have occurred before the member terminated employment. If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member is entitled to in-line-of-duty disability benefits.

³⁵ Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, available at http://www.myflorida.com/audgen/pages/pdf_files/2017-073.pdf (last visited Jan. 12, 2018).

³⁶ Section 121.0515(1), F.S.

³⁷ *Id.*

³⁸ Members of both the FRS Pension Plan and the FRS Investment Plan are eligible for disability coverage.

There are several important differences in the laws applicable to disability benefits, depending on whether the disability is found to be due to an injury or illness “suffered in the line of duty”:

- *Eligibility* — A FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, the member must have 8 years of creditable service³⁹ before becoming disabled in order to receive disability retirement benefits for any disability occurring other than in the line of duty.
- *Burden of Proof* — Proof of disability is required, including certification by two Florida-licensed physicians that the member’s disability is total and permanent (i.e., that the member is prevented by reason of a medically determinable physical or mental impairment from engaging in gainful employment of any type). It is the responsibility of the applicant to provide such proof. Unless a legal presumption applies such as the one provided under s. 112.18, F.S., to qualify to receive the higher in-line-of-duty disability benefits, the member must also show by competent evidence that the disability occurred in the line of duty.
- *Chapter 175, F.S., plans* — Pension plans for firefighters established pursuant to ch. 175, F.S., must provide a minimum line of duty benefit equal to the firefighter’s accrued retirement benefit, but no less than 42 percent of his or her average monthly salary at the time of disability. Disability occurs when an injured plan member is wholly prevented from rendering useful and efficient service as a firefighter and is likely to remain so in the opinion of the board of trustees, after the member has been examined by a duly qualified doctor selected by the board. Local law plans may have enacted disability benefits that exceed the minimum requirements.

Existing In-Line-of-Duty Disability Presumptions

Section 112.18, F.S., establishes a presumption for state and local firefighters, law enforcement, correctional, and correctional probation officers regarding determinations of job-related disability. This statute provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by these officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease was not related to the person's employment.

Section 175.231, F.S., provides a similar presumption for firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension. Section 185.34, F.S., provides a similar presumption for municipal police officers’ pension plans.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, that such employee qualifies for in the line of duty disability or death benefits if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

³⁹ Until July 1, 2001, any member who joined the FRS on or after July 1, 1980, was required to complete 10 years of creditable service to qualify for disability benefits for a disability that was not job-related. Under current law, the 10-year service requirement has been reduced to 8 years.

Absent one of the existing presumptions, the FRS member has the burden of proof when claiming in the line of duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.⁴⁰ If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Death Benefits Available for FRS Members

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members. Under s. 121.091(7), F.S., death benefits may be paid for an active member of the FRS Pension Plan who dies before retirement due to an injury or illness (including tuberculosis, heart disease, or hypertension). If the injury or illness arises out of and in the actual performance of duty required by the job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-line-of-duty death benefits. There are important differences in the laws applicable to death benefits, depending on whether the death is found to be due to an injury or illness "suffered in the line of duty."

From the first day on the job, an FRS Pension Plan member is eligible for in-line-of-duty death benefits that will pay a minimum monthly benefit to a survivor equal to half the member's last monthly salary. If the deceased member would have been entitled to a higher retirement benefit based on service credit, the higher benefit would be payable to his/her spouse or eligible dependent(s). The survivor benefit for Special Risk Class members killed in the line of duty is 100 percent of the member's base pay at the time of death if the member's death occurs on or after July 1, 2013. Unless a legal presumption applies such as those provided under s. 112.18, F.S., the eligible beneficiary must show by competent evidence that the death occurred in the line of duty to qualify to receive the higher in-line-of-duty death benefits.

Local Government Pension Plans

Chapters 175 and 185, F.S., provide funding mechanisms for pension plans of municipal firefighters and police officers, respectively. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.⁴¹ Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

Mass Casualty Incident

The definition of "mass casualty incident" generally refers to an incident that overwhelms the local healthcare system, with a number of casualties that vastly exceeds the local resources and

⁴⁰ Sections 121.091(4)(c) and (7)(d), F.S.

⁴¹ Sections 175.191 and 185.18, F.S.

capabilities in a short period.⁴² Another source describes a mass casualty incident as an incident that produces multiple casualties such that emergency services, medical personnel, and referral systems within the catchment area cannot provide adequate and timely response and care without unacceptable mortality or morbidity.⁴³

The purpose of the *Florida Field Operations Guide* (FOG)⁴⁴ is to define the organizational plan to efficiently triage, treat, and transport victims of multiple/mass casualty incidents (MCIs). In addition, the FOG contains additional health and medical resources to manage a variety of incidents. This procedure is intended for incidents involving a number of injured that exceeds the capabilities of the first arriving unit. An MCI is categorized at different levels depending on the number of victims. The number of victims are based on the initial size-up, prior to triage. MCI Level 1 (5-10 victims), MCI Level 2 (11-20 victims), MCI Level 3 (21-100 victims), MCI Level 4 (101-1000 victims), MCI Level 5 (over 1,000 victims, or when regional resources are overwhelmed or exhausted).

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., to revise compensability standards of first responders for a mental or nervous injury occurring as a manifestation of a compensable injury. The section eliminates the prohibition on the payment of indemnity benefits unless a physical injury accompanies the mental or nervous injury. The bill lowers the evidentiary standard for compensability from clear and convincing evidence to a preponderance of the evidence. A preponderance of evidence is evidence that is of greater weight or more convincing than the evidence offered in opposition to it.⁴⁵ Current law provides that only medical benefits are payable for a mental or nervous injury of a first responder that is unaccompanied by a physical injury. Indemnity benefits are available only if the mental or nervous injury is accompanied by a physical injury.

Section 2 amends s. 440.093, F.S., to authorize the payment of medical and indemnity benefits to a law enforcement officer, firefighter, emergency medical technician, or paramedic who experiences PTSD that is not accompanied by a physical injury if certain conditions are met. Currently, for non-first responders, a mental or nervous injury is compensable if it is accompanied by a physical injury requiring medical treatment. Further, only medical benefits are payable to a first responder under s. 112.1815, F.S., for a mental or nervous injury that is unaccompanied by a physical injury.

The bill provides that a law enforcement officer, firefighter, emergency medical technician, or paramedic would be entitled to receive workers' compensation benefits for PTSD, or a mental or nervous injury, if all of the following conditions are met:

- The mental or nervous injury resulted while the employee was acting within the scope of employment as described in s. 440.091, F.S., and the employee witnessed or arrived on the scene of a murder, suicide, fatal injury, child death, or mass casualty incident; and

⁴² See Ben-Ishay *et al.* World Journal of Emergency Surgery (2016) 11:8.

⁴³ Dr. Lee Faulter, *Multiple Traumas: Where do I start?* (on file with the Senate Committee on Banking and Insurance).

⁴⁴ See Florida Division of Emergency Management, Florida Field Operations Guide (Oct. 2012), Rule 10B-197, F.A.C. available at <https://floridadisaster.org/FOG/chapter10B-MassCasualty.pdf> (last visited Jan. 12, 2018).

⁴⁵ Black's Law Dictionary Fifth Edition, *Preponderance of Evidence*, pg. 1064 (1979).

- The mental or nervous injury is demonstrated by a preponderance of evidence by a licensed psychiatrist to meet the criteria for PTSD as described in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Section 3 provides the bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

Although the bill does not contain an express finding that the law fulfills an important state interest, the bill does appear to apply to all first responders delineated under s. 112.1815, F.S., and specified law enforcement officers, firefighter, emergency medical technicians, and paramedics described in s. 440.093, F.S., similarly situated, including state agencies, school boards, community colleges, counties, municipalities, special districts, and private entities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Lowering the compensability standards relating to mental nervous disorders for first responders as described in s. 112.1815, F.S., and for law enforcement officers, firefighters, emergency medical technicians, and paramedics for PTSD as provided in s. 440.093, F.S., is expected to increase the number of compensable claims for these first

responders, law enforcement, firefighters, paramedics, and emergency medical technicians. As a result, the first responders who have incurred a mental or nervous injury without an accompanying physical injury could receive access to indemnity benefits as well as the current medical benefits. Law enforcement officers, firefighters, emergency medical technicians, and paramedics covered under section 2 of the bill who have incurred such a PTSD without an accompanying physical injury and met other conditions could receive access to indemnity benefits as well as medical benefits.

The fiscal impact on private employers is indeterminate.

NCCI Analysis of SB 376

According to NCCI, the implementation of the initial filed version of the bill may have resulted in an indeterminate increase in system costs for law enforcement officer, firefighter, emergency medical technician, and paramedic classifications in Florida.⁴⁶ However, the overall impact on workers' compensation costs was expected to be minimal, since the data reported to NCCI show that first responders represent approximately 2.2 percent of statewide losses in Florida. The 2.2 percent may be an underestimate for the total population of Florida workers, as many entities that employ law enforcement officers, firefighters, and emergency medical technicians are self-insured and do not report data to NCCI.

The ultimate system cost impact would be realized through future loss experience and reflected in subsequent NCCI rate filings in Florida. A minimal impact in this context is defined as an impact on overall system costs of less than 0.2 percent or approximately \$7 million.⁴⁷ The bill lowers the evidentiary standard for recovering benefits in a PTSD-related claim, which may increase the cost impact of the bill.

NCCI is unable to quantify the expected increase in the number of PTSD-related claims that would be entitled to indemnity benefits under SB 376. However, due to the high prevalence of PTSD among first responders, NCCI estimates that the increase in compensable PTSD-related claims could be significant for these occupational classifications.⁴⁸ If enacted, the bill could potentially result in increased litigation related to the confirmation of a PTSD diagnosis and the determination of whether the PTSD arose out of an activity performed within the course of employment. Any costs associated with increased litigation would be expected to exert upward pressure on overall workers' compensation system costs.

⁴⁶ NCCI, *Analysis of SB 376* (Oct. 19, 2017) (on file with Senate Banking and Insurance Committee).

⁴⁷ NCCI correspondence (Dec. 4, 2017) (on file with Senate Committee on Banking and Insurance).

⁴⁸ According to NCCI, although events leading to PTSD cannot be predicted with certainty, the incidence of PTSD is estimated to be significantly higher for first responders compared to the general population. According to the U.S. Department of Veterans Affairs, about 55 percent of the population will experience at least one trauma in their lives and, as a result, about 7-8 percent of the population will have PTSD at some point in their lives. In comparison, the National Center for Biotechnical Information (NCBI) concluded that the prevalence of PTSD among Emergency Medical Technicians (EMTs) is greater than 20 percent, and various sources have reported the prevalence of PTSD among firefighters to be in the 7 percent to 37 percent range.

C. Government Sector Impact:

The fiscal impact on state and local governments is indeterminate. State and local governments may incur higher claim costs for workers' compensation benefits of first responders, law enforcement officers, firefighters, emergency medical technicians, or paramedics contingent upon the frequency and severity of the claims.⁴⁹

The number of affected state and local government positions is indeterminate. According to the Department of Management Services (DMS), as of December 1, 2017, the total number of State Personnel System (SPS) employees in firefighter positions is 613 (out of 650 total positions) and the total number of SPS employees in Law Enforcement Officer positions is 4,342 (out of a total of 4,652 positions). This information does not include volunteers. According to the DMS, the SPS does not utilize Paramedic or Emergency Medical Technician classes, nor does it have volunteers perform firefighter or law enforcement duties.⁵⁰

Department of Agriculture and Consumer Services (DACS).⁵¹ Since s. 112.1815, F.S., was enacted, the Florida Forest Service (FFS) and Office of Agricultural Law Enforcement (OALE) have not received any workers' compensation claims for mental or nervous injuries. An increase in annual claims from first responders is highly probable; however, the limited level of exposure by the employees of DACS to the scenarios and the requirements are likely to lessen the frequency of claims. A negative fiscal impact of unknown severity is likely. There are currently 211 special-risk positions in OALE and 589 in FFS that are first responder positions. The FFS has a volunteer program; however, only a small portion of the FFS volunteers are classified as firefighters.

Division of Risk Management/Department of Financial Services (DFS).⁵² Since the enactment of s. 112.1815, F.S., available records indicate that only one state employee has received medical benefits relating to a work-related mental condition without a physical injury. Assuming the frequency does not significantly increase, and using an average Florida indemnity cost of \$15,378 for all claims as calculated by NCCI, DFS indicates there is a potential for small increases in claims costs. A state employee that is unable to return to work due to the extent of his or her mental injuries could result in a much higher cost depending on his or her age and salary. According to DFS, there are 4,174 state employees classified as first responders.⁵³ This number does not include volunteers or local government employees or volunteers.

⁴⁹ See NCCI *Analysis of SB 376* in Private Sector Impact.

⁵⁰ Department of Management Services correspondence (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

⁵¹ Department of Agriculture and Consumer Services, *Legislative Analysis of SB 376* (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

⁵² Department of Financial Services, *Legislative Analysis of SB 376* (Oct. 11, 2017) (on file with the Senate Committee on Banking and Insurance).

⁵³ Department of Financial Services correspondence (Dec. 4, 2017) (on file with the Senate Committee on Banking and Insurance).

Department of Highway Safety and Motor Vehicles (DHSMV).⁵⁴ The DHSMV has averaged \$73,500 in annual costs for injury-related workers' compensation benefits. There have not been any claims for mental or nervous injuries in recent years. If this bill is enacted, there could be an indeterminate, but possibly significant, increase in expenditures. The DHSMV has 1,974 FHP trooper positions, approximately 228 auxiliary volunteers and 50 reserve officers (volunteers). A reserve officer is a certified law enforcement officer appointed to serve without compensation and vested with the authority to bear arms and make arrests.

VI. Technical Deficiencies:

Florida Statutes do not define the term "mass casualty incidence." A definition of this term in ch. 440, F.S., may reduce ambiguity and possible litigation as to what types of situations this term would cover.

It is unclear what positions or employment classifications are covered and what mental nervous disorders are compensable under the bill, which could lead to additional litigation and delays in receiving benefits. It is uncertain whether all volunteer, as well as employed, law enforcement, firefighters, emergency medical technicians, and paramedics acting within the course of employment as described in s. 440.091, F.S., who experience a mental or nervous disorder and are diagnosed with PTSD are covered under Section 2 of the bill. The term, "first responders" is not defined or used in ch. 440, F.S. Section 112.1815, F.S., applies to first responders who are employees or volunteers who meet certain statutory definitions and conditions.

Section 1 provides that a mental nervous disorder involving a first responder and occurring as a manifestation of a compensable injury would be a compensable mental or nervous injury (medical as well as indemnity benefits) if the injury was demonstrated by a preponderance of evidence. Section 2 provides that PTSD is a compensable injury (medical and indemnity benefits) for law enforcement officers, firefighters, emergency medical technicians or paramedics if certain conditions are met. It is unclear whether the intent of the bill is to provide benefits for all mental or nervous disorders or only PTSD for first responders, law enforcement officers, firefighters, emergency medical technicians and paramedics.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.1815 and 440.093.

⁵⁴ Department of Highway Safety and Motor Vehicles, *Legislative Analysis of SB 376* (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on December 5, 2017:

The CS:

- Lowers the evidentiary standard for compensability of mental nervous injuries of first responders, defined in s. 112.1815, F.S., from clear and convincing evidence to preponderance of evidence.
- Revises compensability requirements of law enforcement officer, firefighter, emergency medical technician, and paramedics for PTSD under ch. 440, F.S., in the following manner:
 - Requires that such an employee must have been acting within the course of employment and the person witnessed, or arrived at the scene of, a murder, suicide, fatal injury, child death, or mass casualty incident.
 - Eliminates the requirement that such an employee must initiate mental health treatment within 15 days after the incident.
 - Requires that the mental nervous injury of such an employee must be demonstrated by a preponderance of evidence, rather than a clear and convincing evidence, by a licensed psychiatrist to meet the criteria for PTSD as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, published by the American Psychiatric Association.
- Changes the effective date of the bill from July 1 to October 1, 2018.

- B. **Amendments:**

None.