

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 453 Officer and Firefighter Physical Examination Requirements and Records

SPONSOR(S): Criminal Justice & Public Safety Subcommittee; Duggan, Byrd, and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1736

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 453 passed the House on March 2, 2022, and subsequently passed the Senate on March 4, 2022.

A law enforcement officer, correctional officer, correctional probation officer, or firefighter who becomes disabled by tuberculosis, heart disease, or hypertension is entitled to a presumption that the disease was contracted in the line of duty, and is therefore compensable under workers' compensation law. If an employer disputes a claim, the legal presumption shifts the burden of proof to the employer, who must prove that the disabling disease is not related to the officer or firefighter's job duties or workplace exposures.

To be eligible for the presumption, the officer or firefighter must have taken a pre-employment physical exam, and the exam must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

Law enforcement, correctional, and correctional probation officers must pass a pre-employment physical examination to be hired by the employing agency, and they are entitled to the benefit of the presumption if the pre-employment physical examination fails to reveal any evidence of tuberculosis, heart disease, or hypertension. Such officers may not use a pre-employment physical conducted by a previous employer to claim the benefit of the presumption when a workers' compensation claim is disputed by a current employer.

The law does not require a pre-employment physical for firefighters. However, persons who wish to become firefighters must demonstrate that they are in good physical condition, by passing a medical exam, to enroll in firefighting training courses and receive a firefighter certification. This medical assessment does not mention specific screening for tuberculosis, heart disease, or hypertension.

The bill requires the employing agency of a law enforcement, correctional, or correctional probation officer to maintain records of an employee's pre-employment physical examination for at least 5 years after the officer separates from the employing agency. The 5-year records retention requirement also applies to firefighters who took a pre-employment physical upon employment with the employing fire service provider. If the employing agency fails to maintain a record of the pre-employment physical, the officer or firefighter is entitled to the presumption that his or her disability due to tuberculosis, heart disease, or hypertension is compensable as an occupational disease under workers' compensation law.

Firefighters who did not undergo a pre-employment physical for the current employer may support a claim for benefits by using the medical exam that was required to enroll in training courses and become certified as a firefighter; such firefighters may be eligible for the presumption so long as the medical exam failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill has an indeterminate fiscal impact on state and local governments. See Fiscal Comments.

The bill was approved by the Governor on May 12, 2022, ch. 2022-114, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Workers' Compensation Presumption

A legal presumption makes it easier for an employee to obtain workers' compensation benefits by shifting the burden of proof in a disability determination from the employee to the employer.¹

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job is associated with a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.²

Florida law includes a presumption that treats tuberculosis, heart disease, and hypertension as occupational diseases associated with firefighters, law enforcement officers, correctional officers, and correctional probation officers. If these employees become temporarily or partially disabled by tuberculosis, heart disease, or hypertension, the law presumes that the employee contracted the disease in the line of duty unless the contrary can be shown by competent evidence.³

However, firefighters, law enforcement officers, correctional officers, and correctional probation officers are entitled to the presumption only if the firefighter or officer passed a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.⁴

If the employee's pre-employment physical exam failed to reveal any evidence of disease, the employee must demonstrate that he or she suffers from tuberculosis, heart disease, or hypertension, but does not have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.⁵

To overcome the statutory presumption, the employer must present clear and convincing evidence that the disease was caused by a non-work-related event or exposure.⁶

Qualifications for Employment as a Law Enforcement, Correctional, or Probation Officer

Florida law sets forth the minimum requirements for any person to be employed or appointed in a full- or part-time capacity, or in an auxiliary capacity, as a law enforcement officer, correctional officer, or correctional probation officer; or to be appointed as an auxiliary correctional officer by a private entity contracting with the Department of Corrections.

¹ *Caldwell v. Division of Retirement, Florida Dept. of Administration*, 372 So. 2d 438 (Fla. 1979).

² S. 440.151(2), F.S.

³ Ss. 112.18(1)(a) and 175.231, F.S.

⁴ S. 112.18(1)(a), F.S.

⁵ *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019), citing *Walters v. State, DOC/Div. of Risk Management*, 100 So. 3d 1173 (Fla. 1st DCA 2019), rehearing denied, review denied 108 So. 3d 654 (The presumption is an adequate substitute for evidence of occupational causation, and compels the legal result that a claimant has proven occupational causation).

⁶ *Butler v. City of Jacksonville*, 980 So. 2d 1250 (Fla. 1st DCA 2008).

The applicant must:

- Satisfy certain age, education, and citizenship requirements;
- Complete a training course;
- Pass a certification exam;
- Pass a criminal background check; and
- Pass a physical examination that includes screening for evidence of tuberculosis, heart disease, or hypertension.⁷

Officers are eligible for the presumption of s. 112.18, F.S., only if the physical exam fails to reveal any evidence of tuberculosis, heart disease, or hypertension.⁸

Qualifications for Certification as a Firefighter

To enroll in firefighting training courses and be certified as a firefighter, an applicant must:

- Be a high school graduate or the equivalent;
- Not have been convicted of specified crimes;
- Submit his or her fingerprints to be processed at the state and national level;
- Have a good moral character;
- Be a nonuser of tobacco or tobacco products for at least one year immediately prior to his or her application; and
- Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant; an osteopathic physician, surgeon, or physician assistant; or an advanced practice registered nurse.⁹

The law does not mention specific screening for tuberculosis, heart disease, or hypertension. The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.¹⁰

Records Retention

According to the records retention schedule for state and local government agencies published by the Florida Department of State, reports of job-related medical examinations must be retained by the Florida Retirement System (FRS) for 25 years after a participating employee separates from government employment.¹¹

Local governments that do not participate in the FRS must maintain reports of job-related medical examinations for 50 years after a participating employee separates from government employment.¹²

State agencies that employ people through the Other Personnel Services system, as interns, or on a voluntary basis must maintain reports of job-related medical examinations for three years after the employee separates from government employment.¹³

⁷ S. 943.13(6), F.S.

⁸ *Id.*

⁹ Ss. 633.408(6)(a)3. and 633.412(5), F.S.

¹⁰ Rule 69A-37.037 and Form DFS-K3-1022.

¹¹ Florida Department of State, Division of Library and Information Services, *General Records Schedule GS1-SL for State and Local Government Agencies*, p. 31, <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited Feb. 14, 2022).

¹² *Id.* at 32.

¹³ *Id.*

The Florida State Fraternal Order of Police brought the issue of missing medical records forward because a vendor hired by the City of Orlando mistakenly destroyed pre-employment physicals for police officers taken prior to 1998, and the error complicated the city's ability to provide workers' compensation benefits to an officer who suffered from Post-Traumatic Stress Disorder after responding to the Pulse Nightclub shooting that left 50 people dead on June 12, 2016.¹⁴

Eligibility for the Workers' Compensation Presumption

In a disputed workers' compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment.¹⁵
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.¹⁶
- Fails to make a claim for benefits prior to or within 180 days after leaving the employment of the employing agency.¹⁷

Firefighters are not subject to the exclusion for prior treatment or compensation and they are not covered by the claim-filing deadline that lets a law enforcement officer, correctional officer or correctional probation officer file a claim up to 180 days after leaving the employment.

Instead, a firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.¹⁸

The Pre-Employment Physical Is Crucial Evidence

To use the presumption, a "firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition."¹⁹

The pre-employment physical examination is required each time the officer or firefighter is employed or appointed at a new employing agency.²⁰ Firefighters who have attempted to rely on a pre-employment physical conducted for a prior employer or for certification as a firefighter have been denied benefits.²¹

¹⁴ Public testimony of Lisa Henning, representing the Florida State Fraternal Order of Police, Insurance & Banking Subcommittee hearing on 2022 House Bill 453, Jan. 19, 2022.

¹⁵ S. 112.18(1)(b)(1)a., F.S.

¹⁶ S. 112.18(1)(b)(1)b., F.S.

¹⁷ S. 112.18(1)(b)(4), F.S.

¹⁸ Ss. 440.151(6) and 440.185(1), F.S.

¹⁹ S. 112.18(1)(a), F.S.

²⁰ "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. S. 943.10(4), F.S.

²¹ See, e.g., *Miami-Dade County v. Davis*, 26 So. 3d 13, at 17 (Fla. 1st DCA 2009) (A firefighter who passed a certification examination before he went to work for the City of Gainesville could not rely on benefit of the presumption when he suffered a heart attack, 30 years later, while working for Miami-Dade County); and *Volusia County Fire Services v. Taafe*, 27 So. 3d 81, at (Fla. 1st DCA 2009) (Fire captain who was diagnosed with hypertension during a pre-employment physical, but was otherwise found fit for duty, could not rely on a pre-employment physical conducted 13 years earlier to demonstrate entitlement to the presumption of s. 112.18, F.S.).

The record of such physical is crucial evidence in a dispute over workers' compensation benefits.

For example, a single reported elevated blood pressure reading at a law enforcement officer's pre-employment physical examination did not constitute evidence of hypertension; thus, the officer was able to establish the presumption that his hypertension was a result of his job duties and was therefore compensable under workers' compensation.²²

In the alternative, a law enforcement officer who suffered a heart attack was not eligible for workers' compensation benefits, even though his pre-employment physical did not reveal evidence of hypertension or heart disease, because the employer demonstrated that the officer's heart attack was caused by a genetic condition that had not been detected in the officer's pre-employment physical.²³

When the parties cannot produce a record of a pre-employment physical, a firefighter or law enforcement officer cannot use the presumption to establish a compensable occupational disease. This was the case for a firefighter who did not undergo a physical examination prior to employment, because the employer did not require a pre-employment physical. The First District Court of Appeal held: "The statute creating the presumption is very clear and unambiguous and requires a physical examination upon entering into any service as a fireman as a prerequisite to entitlement to the presumption."²⁴

Effect of the Bill

The bill amends ss. 112.18 and 943.13, F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer and the employing fire service provider of a firefighter to maintain records of an employee's pre-employment physical examination for at least 5 years after he or she separates from the employing agency or fire service provider.

If the employing agency or fire service provider fails to maintain records of an officer's or firefighter's pre-employment physical examination, the officer or firefighter is entitled to the presumption that his or her disability due to tuberculosis, heart disease, or hypertension is compensable as an occupational disease under workers' compensation law.

Because state and local government agencies are already required to retain such records longer than 5 years under Department of State requirements, the records retention requirement under the bill does not impose any new duties on government employers. However, the bill may encourage such employers to specifically maintain pre-employment physical examinations more diligently, as failing to maintain the records will result in an employee receiving the presumption for workers' compensation benefits, when his or her physical examination may not have supported the presumption.

The bill also authorizes the medical examination required for firefighter certification to satisfy the pre-employment physical examination required under s. 112.18, F.S., if:

- A firefighter's employer did not require a pre-employment physical examination; and
- The certification medical examination did not reveal any evidence of tuberculosis, heart disease, or hypertension.

A firefighter may only undergo a certification medical examination once in his or her career, as such examination is only required to begin training and receive certification as a firefighter, and is not required to take place with each new employer. As such, the bill may encourage fire service providers to require pre-employment physical examinations that include screening for tuberculosis, heart disease, or hypertension for all new employees.

²² *City of Tavares v. Harper*, 230 So. 3d 918 (Fla 1st DCA 2017).

²³ *Punsky v. Clay County Sheriff's Office*, 18 So. 3d 577 (Fla. 1st DCA 2009).

²⁴ *Cumbie v. City of Milton*, 496 So 2d 923 (Fla. 1st DCA, 1986).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact on state and local governments. If employing agencies or fire service providers fail to maintain records of the pre-employment physical examination for 5 years after the employee's separation, it is presumed that the employee has met the requirements of s. 112.18(1)(a), F.S. Additionally, firefighters who were not required to undergo pre-employment physical examinations may use the medical examination required for firefighter certification to satisfy the presumption requirement, if the medical examination failed to reveal evidence of tuberculosis, heart disease, or hypertension. This could result in more firefighters and officers qualifying for workers' compensation benefits under s. 112.18, F.S.

There is likely no fiscal impact on employing state agencies to implement the personnel records retention requirements of the bill, because such agencies are already subject to records retention requirements.