

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 Rules

BILL: CS/SB 1066

INTRODUCER: Banking and Insurance Committee and Senator Burgess and others

SUBJECT: Workers' Compensation Benefits for First Responders

DATE: February 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 expands compensability of first responders, as it relates to workers' compensation, by revising the deadline for first responders to file a notice of injury with their carrier or employer. The bill provides that the time of notice of injury is measured from one of the qualifying events or diagnosis of the disorder, whichever is later. Further, the bill provides that a claim is barred if the notice is not filed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. Current law provides the time for notice of injury or death is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim must be noticed within 52 weeks after the qualifying event. The bill would eliminate the 52-week deadline for filing a claim.

The potential fiscal impact on the State Risk Management Trust Fund could be significant based on the number of first responders employed by state agencies and universities. The bill will have a fiscal impact on local governments; however, the magnitude of the impact is indeterminate.

II. Present Situation:

In recent years, the issue of mental health has taken an even more prominent position in discussions across the country given the potential effects of the pandemic on first responders, healthcare workers, and others.¹ While first responders face the possibility of physical harm from

¹ NCCI, 2021 State of the Line Guide, Mental-Mental Injuries and Workers Compensation, available at [2021 State of the Line Guide \(ncci.com\)](https://www.ncci.com/2021-state-of-the-line-guide) (last visited Jan. 29, 2022).

environmental and other exposures, their work may also negatively affect their mental health.² Pre-existing mental health conditions may be exacerbated and new mental health conditions may arise due to extremely stressful working conditions.³ Future costs for expanded PTSD coverage is a concern for some state and local governments.⁴ While treatment of PTSD is critical, the addition of PTSD coverage for select groups of state and local government employees introduces a new area of care less focused on physical treatment, the traditional type of workers' compensation care, and more focused on mental health treatment.⁵

Post-Traumatic Stress Disorder (PTSD)

The American Psychiatric Association provides diagnostic criteria for mental disorders, including PTSD, in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). 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.⁶ A diagnosis of PTSD requires exposure to an upsetting traumatic event; however, exposure can be indirect rather than first hand.⁷ Symptoms fall into the following four categories: intrusion, avoidance, alterations in cognition and mood, and alterations in arousal and reactivity.⁸ In order to diagnose a person with PTSD, symptoms must last for more than a month and must cause significant distress or problems in the individual's daily functioning.⁹

Many individuals develop symptoms within three months of the trauma; but symptoms may appear later and often persist for months and sometimes years.¹⁰ Further, PTSD often occurs with other related conditions, such as depression, substance use, memory problems and other physical and mental health problems.¹¹ One study noted that the onset of PTSD symptoms is usually in the first month after the traumatic event; however, in about 15 percent of the cases, there may be a delay of months or years before symptoms appear.¹² At least a third of the individuals who initially develop PTSD remain symptomatic for three years or longer, and are at risk of secondary problems such as substance abuse.¹³

²Johns Hopkins Public Health Awareness Programs, *First Responders, Mental Health Services, and the Law* (Apr. 25, 2013) available at [FirstResp_MHSvcs.pdf \(jhsph.edu\)](#) (last visited Jan. 29, 2022).

³ *Id.*

⁴ Optum, *States continue with PTDS and presumption coverage raising concerns over future impact* (Jun. 24, 2020), available at [PTSD Awareness \(optum.com\)](#) (last visited Jan. 29, 2022).

⁵ *Id.*

⁶ See American Psychiatric Association, *What is Posttraumatic Stress Disorder?* Available at [What Is PTSD? \(psychiatry.org\)](#) (Aug. 2020) (last visited Jan. 29, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* at note 6.

¹¹ *Id.*

¹² National Collaborating Centre for Mental Health (UK). *Post-Traumatic Stress Disorder: The Management of PTSD in Adults and Children in Primary and Secondary Care*. Leicester (UK): Gaskell; (2005 updated 2018) available at [Post-traumatic stress disorder - Post-Traumatic Stress Disorder - NCBI Bookshelf \(nih.gov\)](#) (last visited Jan. 29, 2022).

¹³ *Id.*

Prevalence Rate

The exact prevalence rate for PTSD is difficult to ascertain. About 15 million adults will have PTSD during a given year.¹⁴ About six or seven percent of the population will have PTSD at some point in their lives.¹⁵ About eight percent of females develop PTSD during their lives compared with about four percent of males.¹⁶ The number of veterans with PTSD varies by service era. An estimated 30 percent of Vietnam veterans have had PTSD in their lifetime.¹⁷ In contrast, about 13-14 percent of Gulf War veterans have PTSD in a given year.¹⁸

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.¹⁹ An estimated 30 percent of first responders develop behavioral health conditions, including depression and PTSD, as compared with 20 percent of the general population.²⁰ 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.²¹ Military veterans deployed from 2001 to 2007 had a 41 percent higher suicide risk than the general population, according to the Department of Veterans Affairs.²²

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.²³ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,²⁴ or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.²⁵

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.²⁶ 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

¹⁴ National Center for PTSD, How Common is PTSD in Adults? Available at [How Common is PTSD in Adults? - PTSD: National Center for PTSD \(va.gov\)](#) (last visited Jan. 29, 2022).

¹⁵ *Mo Med.* 2021 Nov-Dec.; 118(6): 546–551.

¹⁶ *Supra* at note 14.

¹⁷ *Supra* at note 15.

¹⁸ *Id.*

¹⁹ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

²⁰ SAMHSA, First Responders' Behavioral Health Concerns, Emergency Response, and Trauma (May 2018) available at [First Responders: Behavioral Health Concerns, Emergency Response, and Trauma \(samhsa.gov\)](#) (last visited Jan. 29, 2022). The term, "first responders," includes emergency medical services, firefighters, and police officers.

²¹ FireRescue1, Increasing suicide rates among first responders spark concern, available at [Increasing suicide rates among first responders spark concern \(firerescue1.com\)](#) (last visited Jan. 28, 2022).

²² *Id.*

²³ Section 440.09(1), F.S.

²⁴ Section 440.38, F.S.

²⁵ Section 627.311(5)(a), F.S.

²⁶ "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.

as compared to all other causes combined, as demonstrated by medical evidence only.²⁷ 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.²⁸ 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.²⁹

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.³⁰ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,³¹ up to the maximum weekly benefit established by law.³² 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.³³
- 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.³⁴
- 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 five years.³⁵

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

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.

²⁷ Section 440.09(1), F.S.

²⁸ Section 440.02(1), F.S.

²⁹ Section 440.13(2)(a), F.S.

³⁰ Section 440.12(1), F.S.

³¹ 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.

³² Section 440.15(1)-(4), F.S.

³³ 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).

³⁴ Section 440.15(3), F.S.

³⁵ Section 440.15(1), F.S.

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 six months after the employee reaches maximum medical improvement.

PTSD Compensability for First Responders

In 2018, the Legislature revised the standards for determining compensability of PTSD as an occupational disease under workers' compensation coverage for first responders.³⁶ As a result, first responders who meet certain conditions may access indemnity and medical benefits for PTSD without an accompanying physical injury. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,³⁷ a firefighter as defined in s. 633.102, F.S.,³⁸ or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,³⁹ employed by state or local government. Section 112.1815, F.S., authorizes the compensation of indemnity benefits for PTSD, if the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
 - Seeing for oneself a deceased minor;
 - Witnessing directly the death of a minor;
 - Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department,
 - Participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
 - Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
 - Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
 - Witnessing directly an injury that results in death, if the person suffered grievous bodily harm that shocks the conscience; or

³⁶ Ch. 2018-124, Laws of Fla.

³⁷ "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.

³⁸ "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.

³⁹ "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.

- Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Further, the PTSD must be demonstrated by clear and convincing evidence. Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

Current law requires an employing agency of a first responder to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

Recent PTSD Litigation in Florida

In a recent workers' compensation case, the employer/servicing agent appealed the Judge of Compensation Claims (JCC) order awarding the claimant payment of indemnity benefits under s. 112.1815(5), F.S. On appeal, the Court held that the JCC misinterpreted the statute to find that the claimant had filed the notice of claim timely because it was filed within 52 weeks of the date of the manifestation of the claimant's PTSD.⁴⁰ The time for filing a notice of injury or death for compensable PTSD suffered by a first responder is measured from date of the qualifying events or the manifestation of the disorder, whichever is later. Further, the notice must be properly noticed within 52 weeks after the qualifying event. The time requirement for a notice of claim under s. 112.1815(5)(d), F.S., operates as a statute of repose that bars actions by setting a time limit within which an action must be filed as measured from a specified act, after which time cause of action extinguished.⁴¹

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., relating to PTSD compensability for first responders, to extend the deadline for a first responder to file a notice of injury with their carrier or employer within 90 days of the date of the qualifying event or the *diagnosis*, rather than manifestation, of the disorder. Further, a claim is barred if the notice is not file within 52 weeks after the qualifying event *or the diagnosis of the disorder, which is later*. This change would essentially eliminate the statute of repose for filing a notice.

Section 2 provides the Legislature finds that the bill fulfills an important state interest.

Section 3 provides that the bill takes effect July 1, 2022.

⁴⁰ *Palm Beach Cty Fire Rescue v. Wilkes*. 309 So.3d 687 (Fla. 1d DCA 2020).

⁴¹ *Id.*

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(a) of the State Constitution provides, in relevant 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 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 the state and local governments. . . .” The provisions of this bill appear to apply to all persons similarly situated (state agencies, state universities, state colleges, and local governments) employing law enforcement officers, correctional officers, and correctional probation officers.

The bill does include legislative findings declaring that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

There is not an express constitutional prohibition against the retroactive application of a noncriminal statute, if a law impairs the obligations of a contract or a vested right, the law is invalid. The Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.⁴² However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, apply retroactively in certain situations.⁴³ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.⁴⁴ A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.⁴⁵ However, even where the

⁴² U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.

⁴³ U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.

⁴⁴ A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

⁴⁵ *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.⁴⁶ Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”⁴⁷

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.⁴⁸ The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.⁴⁹

The bill revises the deadline for filing a notice of injury for a PTSD claim. Currently, the time for such claim expires 52 weeks after the qualifying event. The bill provides that the time for notice of injury is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim under s. 112.1815, F.S., must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. This would appear to be a substantive change.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide additional time for a first responder to file a notice of injury.

Private employers who employ first responders and secure workers' compensation coverage through a carrier may experience an increase in their respective premiums due to the increase in workers' compensation costs for first responders.

Implementation of the bill may increase litigation costs due to the elimination of the current notice of injury deadline and implementation of the new standard.

C. Government Sector Impact:

The amount of increase in the cost of workers' compensation coverage on local government is indeterminate. Some local governments self-insure and others secure coverage through carriers. It is unclear if fewer carriers will write this coverage because of the impact of the bill.

⁴⁶ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

⁴⁷ *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

⁴⁸ U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

⁴⁹ *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); see, e.g., *Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

Implementation of the bill may increase litigation costs due to the elimination of the current notice of injury deadline.

The bill will result in an increase in workers' compensation costs for the state Risk Management Trust Fund, which administers claims for state agencies and universities.⁵⁰

National Council on Compensation Insurance Preliminary Cost Impact of SB 1066

The National Council on Compensation Insurance (NCCI) estimates that, if enacted, SB 1066 would place upward pressure on workers compensation (WC) system costs in Florida. The magnitude of such an increase is unknown but could be material on the occupational classes affected.⁵¹ The first responder classifications represent approximately 2 percent of losses⁵² in Florida. If enacted, any potential cost impact would be realized through future loss experience, and reflected in subsequent NCCI rate filings in Florida, as appropriate.

The NCCI notes that in a recent fiscal note related to another bill, SB 664, the Florida Division of Workers' Compensation (DWC) of the Department of Financial Services indicated that, since the enactment of the 2018 first responder legislation, there have been 50 WC claims brought by first responders with PTSD injuries and no accompanying physical injury. To date, the total amount of WC benefits paid for these claims is over \$2.1 million, which translates to an average cost per claim of more than \$42,000. The proposed lengthening of time proposed in CS/SB 1066 for notice of a claim may result in additional PTSD injuries receiving WC benefits that would not have otherwise met the notice requirements. While the number of such instances is unknown, data from the Florida DWC highlights that such claims can be material in cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.1815 of the Florida Statutes.

⁵⁰ Department of Financial Services, 2022 Legislative Analysis of SB 1066 (Dec. 12, 2021).

⁵¹ NCCI, *Preliminary Cost Impact Analysis of SB 1066* (Jan. 31, 2022) (on file with Senate Banking and Insurance Committee). The NCCI is the statistical rating organization for workers' compensation carriers in Florida and other states.

⁵² NCCI Workers Compensation Statistical Plan data for Florida policies becoming effective between 1/1/2011 and 12/31/2015. This figure of 2 percent may understate the total population share of Florida first responders, since the organizations employing them are often self-insured and therefore are not required to report data to NCCI.

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 Feb. 2, 2022;

The CS provides that the Legislature declares that the bill fulfills an important state interest.

- B. **Amendments:**

None.