

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 723 Extraterritorial Reciprocity in Workers' Compensation Claims

SPONSOR(S): Insurance & Banking Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Reilly	Cooper

SUMMARY ANALYSIS

Florida's Workers' Compensation Law, chapter 440, F.S., provides medically necessary treatment and, in some cases, compensation for disability to employees who suffer work-related injuries. Most states provide that workers' compensation insurance coverage in the employer's home state covers employees temporarily working in another state. Such laws authorize "extraterritorial" coverage.

At least 11 jurisdictions recognize another state's extraterritorial provisions under limited conditions. Specifically, this occurs when the other state also exempts out-of-state employees temporarily working within its borders (and their employers) from its workers' compensation law and provides that such employees (and employers) are subject to the law of the employer's home state. Laws that limit recognition of another state's extraterritorial provisions in this manner are said to provide "extraterritorial reciprocity," i.e., a state will honor other states' extraterritorial provisions as long as the other states honor its extraterritorial provisions. For example, California will not exercise jurisdiction over out-of-state employees temporarily working within its boundaries when certain conditions are met, if the employer's home state similarly would not exercise jurisdiction over California employees temporarily working there.

The bill provides for extraterritorial reciprocity under chapter 440, F.S. Employees who work for an employer in a state other than their primary state of employment for no more than 10 consecutive days or a maximum of 25 total days in a calendar year are considered to be "temporarily working" in that state. Florida employees injured while temporarily working in another state are to receive benefits under Florida's Workers' Compensation Law. Out-of-state employees injured while temporarily working in Florida (and their employers) are exempted from chapter 440, F.S., and will receive benefits under the law of their home state, which will be the employee's exclusive remedy, if the following conditions are met:

1. The employer has furnished coverage under the workers' compensation law (or similar law) of the employer's home state that covers the employee's employment while in Florida.
2. The extraterritorial provisions of Florida's Workers' Compensation Law are recognized in the employer's home state.
3. Florida employees and employers are exempted from the workers' compensation law (or similar law) of the employer's home state for injuries that occur while Florida employees are temporarily working in the employer's home state.

Employees who have a claim in Florida and another state for the same injury are entitled to recover the amount of compensation due under chapter 440, F.S. Florida courts are required to take judicial notice of the construction of the laws of another jurisdiction if such construction is necessary in a legal proceeding.

A certificate from a duly authorized officer of the appropriate department of the employer's home state that the employer has provided extraterritorial coverage for its employees while temporarily working in Florida is prima facie evidence that the employer carries workers' compensation insurance.

To the extent that the bill provides for application of chapter 440, F.S., to Florida employees temporarily working in another state, the bill provides cost certainty for workplace injuries and decreases costs associated with retention of legal counsel with expertise in other states' workers' compensation laws.

The bill is effective July 1, 2011, and applies to any claim made on or after that date, regardless of the date of the accident.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcs0723.INBS

DATE: 3/22/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Law

Chapter 440, F.S., is Florida's Workers' Compensation Law. Workers' compensation provides medical benefits and, in some cases,¹ compensation for disability for workplace injuries that arise out of work performed by an employee in the course and scope of employment.² Each state's workers' compensation system is unique, providing different eligibility requirements and levels of benefits (medical and monetary).

Florida employees injured while temporarily working in another state may claim benefits under chapter 440, F.S., or the law of the state in which they are injured. If benefits are claimed from another state, the "total compensation"³ an employee may receive is limited to that available under Florida's Workers' Compensation Law. Employees from another state injured while temporarily working in Florida may claim benefits under Florida law or under their primary state of employment. However, no definition is provided in chapter 440, F.S., for "temporarily working" in a state.

In 2003, Florida enacted workers' compensation reform legislation.⁴ Among other changes, it was established that employers with employees engaged in the construction industry in Florida are required to obtain Florida-specific coverage (a Florida policy or endorsement that uses Florida class codes and rates).⁵ At that time of the reform, Florida rates were consistently the highest or second highest in the country.⁶ The requirement was designed, in part, to level the playing field between out-of-state and in-state employers in bidding on construction industry projects in Florida. Since enactment of reform legislation, overall workers' compensation rates in Florida have decreased a cumulative 61.9 percent.⁷

In-State and Out-of-State "Lost-Time" Injuries Reported to the Florida Division of Workers' Compensation

In Florida, a lost-time claim refers to workplace injuries that cause an employee to be out of work for more than 7 days and must be reported by the insurance company to the Florida Division of Workers' Compensation (the Division). From 2005 to 2010, the number of lost-time claims filed each year with the Division for injuries that occurred in another state ranged from a low of 666 (in 2006) to a high of 866 (in 2009). The Division also reports that the number of lost-time claims for employees who resided in another state decreased from 938 claims (in 2005) to 538 claims (in 2010).

Lost-time claims for injuries that occurred in Florida ranged from 68,838 (in 2005) to a low of 42,353 (in 2010). The number of lost-time claims for Florida residents also decreased from 76,136 (in 2005) to 46,041 (in 2010).

¹ Compensation for disability is provided when the workplace injury causes an employee to miss more than 7 days of work. *See s. 440.12(1), F.S.*

² Section 440.09(1), F.S.

³ Section 440.09, F.S. Pursuant to s. 440.02(7), F.S., compensation is defined to mean monetary benefits.

⁴ Chapter 2003-412, L.O.F.

⁵ Section 440.10(1)(g), F.S.

⁶ In 2000, Florida had the highest workers' compensation premiums in the country, and the second highest in 2002. See "Workers' Compensation Premium Rate Rankings for 2000, 2002," Oregon Department of Consumer and Business Services. Available at: <http://www.cbs.state.or.us> (last accessed March 13, 2010).

⁷ "Florida Office of Insurance Regulation Releases Annual Workers' Compensation Report." Press release dated January 5, 2011. Available at: <http://www.floir.com/pressreleases/viewmediarelease.aspx?id=3777> (last accessed March 13, 2011).

Extraterritorial Coverage and Extraterritorial Reciprocity

Most workers' compensation systems provide that coverage from an employer's home state extends to, and follows, employees who are temporarily working for their employer in another state.⁸ Such "extraterritorial" coverage is available to the extent that it is not inconsistent with the terms of the employer's insurance policy.

At least 11 jurisdictions recognize another state's extraterritorial provisions under limited conditions.⁹ Specifically, this occurs when the other state similarly exempts out-of-state employees temporarily working within its borders (and their employers) from its workers' compensation law and provides that such employees (and employers) are subject to the law of the employer's home state. Laws that limit recognition of another state's extraterritorial provisions in this manner are said to provide "extraterritorial reciprocity," i.e., a state will honor the extraterritorial provisions of other states as long as the other states honor its extraterritorial provisions. For example, California will not exercise jurisdiction over out-of-state employees temporarily working within its boundaries (and their employers) when certain conditions are met, if the employer's home state similarly would not exercise jurisdiction over California employees temporarily working there.

Retroactive Application of Statutes

The general rule in insurance is that the statute in effect at the time an insurance contract is executed governs the substantive issues arising in connection with that contract.¹⁰ Thus, if the Legislature amends an insurance law, the amendment typically will not apply to an insurance contract entered into before the amendment. However, if the amendment is procedural, the court may apply it retroactively to an insurance contract entered into before the amendment.

If the Legislature clearly expresses an intent that a statute apply retroactively, the court then determines whether retroactive application is constitutionally permissible.¹¹ Courts make this determination by looking to the effect of a statute. Stated legislative intent that a statute apply retroactively is not necessarily dispositive as to the retroactive application.

Statutes that do not alter contractual or vested rights but relate only to remedies or procedure can be applied retroactively.¹² Procedural law concerns the means and methods to apply and enforce substantive duties and rights.¹³

Statutes affecting substantive rights, liabilities, and duties cannot apply retroactively.¹⁴ Also, statutes impairing vested rights, creating new obligations, or imposing new penalties cannot apply retroactively.¹⁵

Effect of the Bill

The bill creates s. 440.094, F.S., which provides for extraterritorial reciprocity under Florida's Workers' Compensation Law. Employees who work for an employer in a state other than their primary state of employment for no more than 10 consecutive days or a maximum of 25 total days in a calendar year are

⁸ See "Extraterritorial Reciprocity Information for All 50 States," a regulatory survey by the Workers' Compensation Division of the Oregon Department of Consumer and Business Services. Available at: <http://www.cbs.state.or.us/wcd/compliance/ecu/etsummary.html> (last accessed March 13, 2011).

⁹ California, the District of Columbia, Maryland, Mississippi, Montana, Nevada, North Dakota, Ohio, Oregon, Rhode Island, and Utah.

¹⁰ Hassen v. State Farm Mutual Automobile Ins. Co., 674 So.2d 106, 107 (Fla. 1996).

¹¹ Romine v. Florida Birth Related Neurological Injury Compensation Ass'n, 842 So.2d 148, 153 (Fla. 5th DCA 2003).

¹² DaimlerChrysler Corp. v. Hurst, 949 So.2d 279 (Fla. 3rd DCA 2007).

¹³ Romine 842 So.2d at 154.

¹⁴ Menendez v. Progressive Express Ins. Co., 35 So.3d 873 (Fla. 2010).

¹⁵ Romine 842 So.2d at 153.

considered to be “temporarily working” in that state for purposes of this section. Florida employees injured while temporarily working in another state are to receive Florida’s workers’ compensation benefits. Out-of-state employees injured while temporarily working in Florida (and their employers) are exempted from Florida’s Workers’ Compensation Law and will receive benefits under the law of their home state, which will be the employee’s exclusive remedy, if the following conditions are met:

1. The employer has furnished coverage under the workers’ compensation law (or similar law) of the employer’s home state that covers the employee’s employment while in Florida.
2. The extraterritorial provisions of Florida’s Workers’ Compensation Law are recognized in the employer’s home state.
3. Florida employees and employers are exempted from the workers’ compensation law (or similar law) of the employer’s home state for injuries that occur while Florida employees are temporarily working in the employer’s home state.

Employees who have a claim in Florida and another state for the same injury are entitled to recover the amount of compensation due under chapter 440, F.S. Florida courts are required to take judicial notice of the construction of the laws of another jurisdiction if such construction is necessary in a legal proceeding.

With respect to out-of-state employers, a certificate from a duly authorized officer of the appropriate department of the employer’s home state that the employer has provided extraterritorial coverage for its employees while temporarily working in Florida is prima facie evidence that the employer carries workers’ compensation insurance.

The bill is effective July 1, 2011, and applies to any claim made on or before this date, regardless of the date of the accident.

B. SECTION DIRECTORY:

Section 1: Creates s. 440.094, F.S., establishing extraterritorial reciprocity under Florida’s Workers’ Compensation Law.

Section 2: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. To the extent that the bill provides for application of chapter 440, F.S., to Florida employees temporarily working in another state (and their employers), the bill provides additional cost certainty for workplace

injuries and decreases costs associated with retention of legal counsel with expertise of other states' workers' compensation laws.

E. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES