



Am. Sub. H.B. 122

123rd General Assembly

(As Passed by the General Assembly)

Reps. Cates, Corbin, Evans, Haines, Hood, Mottley, Olman, Tiberi, Van Vyven, Vesper, Willamowski, Coughlin, Williams, Buehrer, Young, Harris, Hood, Terwilleger, Callender, Buchy, Damschroder, Widener, Austria, Jacobson

Sens. Hottinger, Nein, Johnson, Mumper, Spada

Effective date: *

ACT SUMMARY

- Establishes criteria to create a rebuttable presumption for the purpose of workers' compensation eligibility determinations that an injured employee's intoxication or being under the influence of a controlled substance not prescribed by a physician is the proximate cause of the employee's injury.
- Automatically creates the rebuttable presumption against an employee if that employee refuses to submit to a requested chemical test.

CONTENT AND OPERATION

Compensation in case of injury

Under Ohio's Workers' Compensation Law, every employee who is injured or who contracts an occupational disease, as well as the dependents of an employee who is killed or who dies as the result of an occupational disease contracted in the course of employment, is entitled to specified levels of compensation for the injury, if the employee experiences any lost work time, as well as payment for medical, nursing, and hospital services, medicines, and funeral expenses, if necessary. The only exceptions to this general eligibility standard are if the injury or disease is: (1) purposely self-inflicted, or (2) proximately caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician (sec. 4123.54).

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

The act amplifies the second exception by establishing a rebuttable presumption (see **COMMENT 1**) that an employee was intoxicated or under the influence of a controlled substance not prescribed by a physician and that the intoxication or influence was the proximate cause of the employee's injury, if any of the following apply:

(1) Within eight hours of the injury, the employee's blood alcohol level tests equal to or greater than .10%;

(2) Within eight hours of the injury, the employee's breath alcohol level tests equal to or greater than .10 g/210L;

(3) Within eight hours of the injury, the employee's urine alcohol level tests equal to or greater than .14 g/100ml;¹

(4) Within 32 hours of the injury, the employee tests above both the following levels established for an enzyme multiplied immunoassay technique screening test (EMIT) and above the following levels established for a gas chromatography mass spectrometry test, or in the alternative, above the levels established for a gas chromatography mass spectrometry test (GC/MS) alone as follows, for substances not prescribed by a physician:

(a) For amphetamines, 1000ng/ml of urine for the EMIT test and 500 ng/ml (nanograms per milliliter) of urine for the GC/MS test;

(b) For cannabinoids, 50 ng/ml of urine for the EMIT test and 15 ng/ml of urine for the GC/MS test;

(c) For cocaine, including crack cocaine, 300 ng/ml of urine for the EMIT test and 150 ng/ml of urine for the GC/MS test;

(d) For opiates, 2000 ng/ml of urine for the EMIT test and 2000 ng/ml of urine for the GC/MS test;

(e) For phencyclidine, 25 ng/ml of urine for the EMIT test and 25 ng/ml of urine for the GC/MS test.

(5) The employee, through a chemical test administered within 32 hours of the injury, is determined to have barbiturates, benzodiazepines, methadone, or propoxyphene in the employee's system that tests above levels established by laboratories certified by the United States Department of Health and Human Services.

¹ *The levels listed in numbers (1) to (3) above are the minimum testing levels used to establish intoxication under current law prohibiting the operation of a motor vehicle while intoxicated (popularly known as the state "OMVI" law) and are referenced as such in the act. (R.C. 4511.19(A)(2) to (7).)*

(6) The employee refuses to submit to a requested chemical test. (Sec. 4123.54(B).)

In order for the rebuttable presumption to arise under the act, the employee must receive, or must have received, notice that the results of, or the employee's refusal to submit to any of the chemical tests described above may affect the employee's eligibility to receive workers' compensation benefits. The act does not specify what type of notice must be given or when the notice must be given to the employee.

COMMENT

In law, a "rebuttable presumption" is an evidentiary rule of law typically used in court proceedings that takes a set of facts and makes a specified inference as to the meaning of those facts (i.e., presumption). The presumption normally remains in force until disproved by the side in the dispute against whom it operates, and if not disproved or if no other evidence is offered to counter its effect, the presumption often will be sufficient to win the case for the party in whose favor it exists.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-02-99	p. 163
Reported, H. Commerce & Labor	04-05-00	p. 1774
Re-Reported, H. Commerce & Labor	05-03-00	p. 1888
Passed House (57-38)	05-10-00	p. 1922
Reported, S. Insurance, Commerce & Labor	11-15-00	p. 2226
Passed Senate (19-13)	12-05-00	p. 2295
House concurred in Senate amendments (59-32)	12-06-00	p. 2435

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