



H.B. 122

123rd General Assembly

(As Reported by H. Commerce and Labor)

Reps. Cates, Corbin, Evans, Haines, Hood, Mottley, Olman, Tiberi, Van Vyven, Vesper, Willamowski, Coughlin, Williams, Buehrer, Young, Harris, Hood

BILL SUMMARY

- Establishes 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 for the employee's use at the time of the injury is the proximate cause of the employee's injury.
- Provides that an employee's refusal to submit to a chemical test or a test of his blood, breath, or urine is admissible as evidence of the employee's intoxication or being under the influence of a controlled substance not prescribed for the employee's use at any hearing to determine the allowance of his workers' compensation benefits and any subsequent appeal to court.

CONTENT AND OPERATION

Compensation in case of injury

Under the current 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 his 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 bill 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 for the employee's use and that the intoxication or influence was the proximate cause of the employee's injury, if either of the following apply:

(1) The employee, through a chemical test of the employee's blood is determined to have a blood alcohol concentration level of .15 or 1% or more by weight of alcohol or, in the case of a chemical test of the employee's breath, urine, or other bodily substance is determined to have an alcohol content equal to or in excess of the amounts specified in the Motor Vehicle Law (see **COMMENT 2**);

(2) The employee has such a controlled substance in the employee's system that tests above thresholds established by the Bureau of Worker's Compensation by rules adopted by the Bureau when the tests are performed within circumstances, manners, and standards established by those rules.

The test would have to be administered within a "reasonable time" after the injury occurred. The refusal of an employee to submit to a chemical test or a test of his blood, breath, or urine, would be admissible as evidence of the employee's intoxication or being under the influence of a controlled substance not prescribed for the employee's use at any hearing to determine the allowance of his workers' compensation benefits and at any subsequent appeal to court.

COMMENT

1. In law, a "rebuttable presumption" is an evidentiary rule of law that takes a set of facts and makes a specified inference as to the meaning of those facts (i.e., presumption). The presumption remains in force until disproved by the side in the dispute against whom it operates, and if not disproved or other evidence offered to counter its effect, the presumption often will be sufficient to win the case for the party in whose favor it exists.

2. Current law (popularly known as the state "OMVI Law") contains general prohibitions under state law against operating a motor vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or with a prohibited concentration of alcohol in the blood, breath, or urine. A person of any age is prohibited from operating a vehicle, streetcar, or trackless trolley within Ohio if he is under the influence of alcohol, a drug of abuse, or both, or if he has a concentration of .10 of one per cent or more by weight of alcohol in his blood, a concentration of .10 of one gram or more by weight of alcohol per 210 liters of his breath, or a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of his urine (sec. 4511.19(A)(2) to (4)). A person who is under 21 years



of age is prohibited from operating a vehicle, streetcar, or trackless trolley within Ohio if he has a concentration of at least .02 of one per cent but less than .10 of one per cent by weight of alcohol in his blood, a concentration of at least .02 of one gram but less than .10 of one gram by weight of alcohol per 210 liters of his breath, or a concentration of at least .028 of one gram but less than .14 of one gram by weight of alcohol per 100 milliliters of his urine (sec. 4511.19(B)(1)(3)).

Because a separate minimum level of concentration of alcohol or drugs is specified for persons under age 21, the bill may be unclear as to whether the stricter standard for young people applies if the injured worker happens to be under age 21.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-02-99	p. 163
Reported, H. Commerce & Labor	04-05-00	p. 1774

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