



H.B. 122

123rd General Assembly

(As Re-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 a rebuttable presumption arises automatically if an employee refuses to submit to a requested chemical test.

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 any of the following apply:

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

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

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

(4) Within 32 hours of the injury, an employee tests above the levels established in an enzyme multiplied immunoassay technique screen (EMIT) and above the levels established for gas chromatography mass spectrometry screening test, or above the levels established for a gas chromatography mass spectrometry test (GC/MS) as follows:

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

(b) For cannabinoids, 50 ng/ml of urine for the EMIT screen 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 screen and 150 ng/ml of urine for the GC/MS test;

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

(e) For phencyclidine, 25 ng/ml of urine for the EMIT screen 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 bill. (R.C. 4511.19(A)(2) to (7).)*

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

COMMENT

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 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

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