



- There may be fewer allowed injury claims as a result of the stricter rebuttable presumption standard. Fewer allowed claims would reduce public employers' experience ratings, in turn reducing premium payments and other assessments owed to BWC. Political subdivisions could save costs as a result of lower BWC premiums and assessments.
- Public employers and BWC would defend these appeals if claimants pursued them in the Industrial Commission. There would be further costs involved once appeals at the Commission were exhausted and the cases were heard in Courts of Common Pleas.

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## *Detailed Fiscal Analysis*

This bill does not directly change who is or is not eligible to receive compensation under the current Worker's Compensation Law. In general, 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 certain benefits. However, 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, then no benefits are entitled.

Under current law, it is the employer's burden to prove that drug or alcohol consumption caused an accident. This bill transfers the burden of proof from the state or employer to the employee or the employee's estate. This bill establishes a rebuttable presumption 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 his injury, if the employee, through testing, is determined to have an alcohol content equal to or in excess of the amounts specified in the Motor Vehicle Law or have such a controlled substance in his system. The test would have to be administered within a "reasonable time" after the injury occurred. Refusal by an employee to submit to a test 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.

Several government units would be affected by this legislation, all to varying degrees. The potential fiscal effects described in this analysis, including impacts on state agencies as well as political subdivisions, are made in the absence of concrete injury data. Two possible scenarios are outlined below.

### **Hypothesis in Which State and Local Fiscal Costs Would Decrease**

One hypothesis is that the rebuttable presumption provision may decrease the number of allowed claims from state and local government workers. In the long run this would reduce premium and assessment rates that are calculated on employers' accident and injury claims experience.

## **Hypothesis in Which State and Local Fiscal Costs Would Increase**

First, assume that the rebuttable presumption may increase costs to state and local government employers. In this case, the bill would provoke more injured workers' to appeal initial BWC decisions based on the rebuttable presumption standard. This may increase the volume of workers' compensation appeals scheduled for Industrial Commission hearings, driving up OIC's operating costs. Furthermore, state or local government employers would have to defend their interests at these hearings, which take place at three levels within the OIC. Ultimately, unresolved disputes are forwarded to the Courts of Common Pleas, adding another potential cost element for BWC, as well as state and local government employers.

Ultimately, it is most likely that a combination of these scenarios would occur. The net effect on costs, whether associated with state employers or local government employers, is uncertain.

□ *LBO staff: Corey C. Schaal, Budget/Policy Analyst  
Nelson D. Fox, Budget/Policy Analyst*

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