

HB0113



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0113

Introduced 1/10/2013, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

820 ILCS 305/11

from Ch. 48, par. 138.11

Amends the Workers' Compensation Act. Provides that an employee may overcome the rebuttable presumption that intoxication was the proximate cause of an injury by the preponderance of admissible evidence that intoxication was not the proximate cause (rather than the sole proximate cause or proximate cause) of the accidental injuries.

LRB098 03000 KTG 33015 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 11 as follows:

6 (820 ILCS 305/11) (from Ch. 48, par. 138.11)

7 Sec. 11. The compensation herein provided, together with
8 the provisions of this Act, shall be the measure of the
9 responsibility of any employer engaged in any of the
10 enterprises or businesses enumerated in Section 3 of this Act,
11 or of any employer who is not engaged in any such enterprises
12 or businesses, but who has elected to provide and pay
13 compensation for accidental injuries sustained by any employee
14 arising out of and in the course of the employment according to
15 the provisions of this Act, and whose election to continue
16 under this Act, has not been nullified by any action of his
17 employees as provided for in this Act.

18 Accidental injuries incurred while participating in
19 voluntary recreational programs including but not limited to
20 athletic events, parties and picnics do not arise out of and in
21 the course of the employment even though the employer pays some
22 or all of the cost thereof. This exclusion shall not apply in
23 the event that the injured employee was ordered or assigned by

1 his employer to participate in the program.

2 Notwithstanding any other defense, accidental injuries
3 incurred while the employee is engaged in the active commission
4 of and as a proximate result of the active commission of (a) a
5 forcible felony, (b) aggravated driving under the influence of
6 alcohol, other drug or drugs, or intoxicating compound or
7 compounds, or any combination thereof, or (c) reckless homicide
8 and for which the employee was convicted do not arise out of
9 and in the course of employment if the commission of that
10 forcible felony, aggravated driving under the influence, or
11 reckless homicide caused an accident resulting in the death or
12 severe injury of another person. If an employee is acquitted of
13 a forcible felony, aggravated driving under the influence, or
14 reckless homicide that caused an accident resulting in the
15 death or severe injury of another person or if these charges
16 are dismissed, there shall be no presumption that the employee
17 is eligible for benefits under this Act. No employee shall be
18 entitled to additional compensation under Sections 19(k) or
19 19(1) of this Act or attorney's fees under Section 16 of this
20 Act when the employee has been charged with a forcible felony,
21 aggravated driving under the influence, or reckless homicide
22 that caused an accident resulting in the death or severe injury
23 of another person and the employer terminates benefits or
24 refuses to pay benefits to the employee until the termination
25 of any pending criminal proceedings.

26 Accidental injuries incurred while participating as a

1 patient in a drug or alcohol rehabilitation program do not
2 arise out of and in the course of employment even though the
3 employer pays some or all of the costs thereof.

4 Any injury to or disease or death of an employee arising
5 from the administration of a vaccine, including without
6 limitation smallpox vaccine, to prepare for, or as a response
7 to, a threatened or potential bioterrorist incident to the
8 employee as part of a voluntary inoculation program in
9 connection with the person's employment or in connection with
10 any governmental program or recommendation for the inoculation
11 of workers in the employee's occupation, geographical area, or
12 other category that includes the employee is deemed to arise
13 out of and in the course of the employment for all purposes
14 under this Act. This paragraph added by this amendatory Act of
15 the 93rd General Assembly is declarative of existing law and is
16 not a new enactment.

17 No compensation shall be payable if (i) the employee's
18 intoxication is the proximate cause of the employee's
19 accidental injury or (ii) at the time the employee incurred the
20 accidental injury, the employee was so intoxicated that the
21 intoxication constituted a departure from the employment.
22 Admissible evidence of the concentration of (1) alcohol, (2)
23 cannabis as defined in the Cannabis Control Act, (3) a
24 controlled substance listed in the Illinois Controlled
25 Substances Act, or (4) an intoxicating compound listed in the
26 Use of Intoxicating Compounds Act in the employee's blood,

1 breath, or urine at the time the employee incurred the
2 accidental injury shall be considered in any hearing under this
3 Act to determine whether the employee was intoxicated at the
4 time the employee incurred the accidental injuries. If at the
5 time of the accidental injuries, there was 0.08% or more by
6 weight of alcohol in the employee's blood, breath, or urine or
7 if there is any evidence of impairment due to the unlawful or
8 unauthorized use of (1) cannabis as defined in the Cannabis
9 Control Act, (2) a controlled substance listed in the Illinois
10 Controlled Substances Act, or (3) an intoxicating compound
11 listed in the Use of Intoxicating Compounds Act or if the
12 employee refuses to submit to testing of blood, breath, or
13 urine, then there shall be a rebuttable presumption that the
14 employee was intoxicated and that the intoxication was the
15 proximate cause of the employee's injury. The employee may
16 overcome the rebuttable presumption by the preponderance of the
17 admissible evidence that the intoxication was not the ~~sole~~
18 ~~proximate cause or~~ proximate cause of the accidental injuries.
19 Percentage by weight of alcohol in the blood shall be based on
20 grams of alcohol per 100 milliliters of blood. Percentage by
21 weight of alcohol in the breath shall be based upon grams of
22 alcohol per 210 liters of breath. Any testing that has not been
23 performed by an accredited or certified testing laboratory
24 shall not be admissible in any hearing under this Act to
25 determine whether the employee was intoxicated at the time the
26 employee incurred the accidental injury.

1 All sample collection and testing for alcohol and drugs
2 under this Section shall be performed in accordance with rules
3 to be adopted by the Commission. These rules shall ensure:

4 (1) compliance with the National Labor Relations Act
5 regarding collective bargaining agreements or regulations
6 promulgated by the United States Department of
7 Transportation;

8 (2) that samples are collected and tested in
9 conformance with national and State legal and regulatory
10 standards for the privacy of the individual being tested,
11 and in a manner reasonably calculated to prevent
12 substitutions or interference with the collection or
13 testing of reliable sample;

14 (3) that split testing procedures are utilized;

15 (4) that sample collection is documented, and the
16 documentation procedures include:

17 (A) the labeling of samples in a manner so as to
18 reasonably preclude the probability of erroneous
19 identification of test result; and

20 (B) an opportunity for the employee to provide
21 notification of any information which he or she
22 considers relevant to the test, including
23 identification of currently or recently used
24 prescription or nonprescription drugs and other
25 relevant medical information;

26 (5) that sample collection, storage, and

1 transportation to the place of testing is performed in a
2 manner so as to reasonably preclude the probability of
3 sample contamination or adulteration; and

4 (6) that chemical analyses of blood, urine, breath, or
5 other bodily substance are performed according to
6 nationally scientifically accepted analytical methods and
7 procedures.

8 The changes to this Section made by Public Act 97-18 apply
9 only to accidental injuries that occur on or after September 1,
10 2011.

11 (Source: P.A. 97-18, eff. 6-28-11; 97-276, eff. 8-8-11; 97-813,
12 eff. 7-13-12.)