

AN ACT

To amend section 4123.54 of the Revised Code to provide a rebuttable presumption that the proximate cause of an injury of an employee, who, through a blood, breath, or urine test, tests positive for the use of alcohol or a controlled substance not prescribed by a physician, is the alcohol or controlled substance.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4123.54 of the Revised Code be amended to read as follows:

Sec. 4123.54. (A) Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not:

~~(A)~~(1) Purposely self-inflicted; or

~~(B)~~(2) Caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, is entitled to receive, either directly from ~~his~~ the employee's self-insuring employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, the compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital services and medicines, and the amount of funeral expenses in case of death, as are provided by this chapter.

(B) For the purpose of this section, provided that an employee is given or has been given notice that the results of, or the employee's refusal to submit to, any chemical test described under this division may affect the employee's eligibility for compensation and benefits pursuant to this chapter and Chapter 4121. of the Revised Code, there is a rebuttable presumption that an employee is intoxicated or under the influence of a controlled substance not prescribed by a physician and that being intoxicated or under

the influence of a controlled substance not prescribed by a physician is the proximate cause of an injury when any one or more of the following is true:

(1) The employee, through a chemical test administered within eight hours of an injury, is determined to have an alcohol concentration level equal to or in excess of the levels established in divisions (A)(2) to (7) of section 4511.19 of the Revised Code;

(2) The employee, through a chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels in an Enzyme multiplied immunoassay technique screening test and above the levels established in division (B)(3) of this section in a gas chromatography mass spectrometry test:

(a) For Amphetamines, one thousand nanograms per milliliter of urine;

(b) For cannabinoids, fifty nanograms per milliliter of urine;

(c) For Cocaine, including Crack cocaine, three hundred nanograms per milliliter of urine;

(d) For opiates, two thousand nanograms per milliliter of urine;

(e) For Phencyclidine, twenty-five nanograms per milliliter of urine.

(3) The employee, through a chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels by a gas chromatography mass spectrometry test:

(a) For Amphetamines, five hundred nanograms per milliliter of urine;

(b) For cannabinoids, fifteen nanograms per milliliter of urine;

(c) For Cocaine, including Crack cocaine, one hundred fifty nanograms per milliliter of urine;

(d) For opiates, two thousand nanograms per milliliter of urine;

(e) For Phencyclidine, twenty-five nanograms per milliliter of urine.

(4) The employee, through a chemical test administered within thirty-two hours of an 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.

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

Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work

is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and ~~his~~ the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of ~~his~~ the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and ~~his~~ the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of ~~his~~ the employee's employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or ~~his~~ the employee's dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or ~~his~~ the employee's dependents by the bureau.

If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the employee and ~~his~~ the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state, and the rights of the employee and ~~his~~ the employee's dependents under the laws of the other state are the exclusive remedy against the employer on account of the injury, disease, or death.

Compensation or benefits are not payable to a claimant during the period of confinement of the claimant in any state or federal correctional institution whether in this or any other state for conviction of violation of any state or federal criminal law.

Am. Sub. H. B. No. 122

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SECTION 2. That existing section 4123.54 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____