



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5721

Introduced 2/9/2010, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

820 ILCS 305/11

from Ch. 48, par. 138.11

Amends the Workers' Compensation Act. Provides that no compensation is payable if an injury was caused primarily by the intoxication of the employee, the influence of alcohol or certain drugs not prescribed by a physician, or the combined influence of alcohol and drugs that affected the employee to the extent that the intoxication constituted a departure from employment. Contains provisions regarding evidence, admissibility, presumptions, and other matters. Requires an employee to notify the employer of the prescription of any narcotic drug that may adversely affect the employee's ability to safely perform his or her job duties before the start of any job duties. Effective immediately.

LRB096 18116 WGH 33491 b

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 Accidental injuries incurred while participating as a
3 patient in a drug or alcohol rehabilitation program do not
4 arise out of and in the course of employment even though the
5 employer pays some or all of the costs thereof.

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

19 No compensation shall be payable if the injury was caused
20 primarily by the intoxication of the employee, or if the injury
21 was caused by the influence of alcohol or any narcotic drugs,
22 barbiturates, or other stimulants not prescribed by a
23 physician, or by the combined influence of alcohol and any
24 other drug or drugs that affected the employee to such an
25 extent that the intoxication constituted a departure from
26 employment. Evidence of the concentration of alcohol or a drug

1 or combination thereof in a person's blood or breath at the
2 time alleged, as determined by analysis of the person's blood,
3 urine, breath, or other bodily substance, shall be admissible
4 in any hearing to determine compensability. If the employee
5 refuses to submit to such analysis, it shall be presumed, in
6 the absence of substantial evidence to the contrary, that the
7 accident was caused by the intoxication of the employee. If
8 there was at the time of the injury 0.08% or more by weight of
9 alcohol in the employee's blood or breath or there is any
10 amount of a drug, substance or compound in the person's breath,
11 blood, or urine resulting from the unlawful use or consumption
12 of cannabis listed in the Cannabis Control Act, a controlled
13 substance listed in the Illinois Controlled Substances Act, or
14 an intoxicating compound listed in the Use of Intoxicating
15 Compounds Act, it shall be presumed, in the absence of
16 substantial evidence to the contrary, that the injury was
17 caused by the intoxication of the employee. Percentage by
18 weight of alcohol in the blood shall be based upon grams of
19 alcohol per 100 milliliters of blood. Percentage by weight of
20 alcohol in the breath shall be based upon grams of alcohol per
21 210 liters of breath.

22 The employee shall notify the employer of the prescription
23 of any narcotic drug that may adversely affect the employee's
24 ability to safely perform his or her job duties prior to the
25 start of any job duties.

26 (Source: P.A. 93-829, eff. 7-28-04.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.