

SB2041



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2041

Introduced 2/26/2021, by Sen. Donald P. DeWitte

SYNOPSIS AS INTRODUCED:

820 ILCS 305/11

from Ch. 48, par. 138.11

Amends the Workers' Compensation Act. Establishes standards with respect to cannabis for impairment sufficient to bar compensation for injuries to employees who are intoxicated. Provides that the presence of 5 nanograms of tetrahydrocannabinol in the blood or 10 nanograms of tetrahydrocannabinol in other bodily substances shall create a rebuttable presumption that intoxication is the proximate cause of the injury. Contains the statement: "Authorized use may be evidenced only by written consent by the employer to the employee, which consent shall not be unreasonably withheld".

LRB102 04490 JLS 14509 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. Measure of responsibility. Except as provided in
8 Section 1.2, the compensation herein provided, together with
9 the provisions of this Act, shall be the measure of the
10 responsibility of any employer engaged in any of the
11 enterprises or businesses enumerated in Section 3 of this Act,
12 or of any employer who is not engaged in any such enterprises
13 or businesses, but who has elected to provide and pay
14 compensation for accidental injuries sustained by any employee
15 arising out of and in the course of the employment according to
16 the provisions of this Act, and whose election to continue
17 under this Act, has not been nullified by any action of his
18 employees as provided for in this Act.

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

1 in the event that the injured employee was ordered or assigned
2 by his employer to participate in the program.

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

1 termination of any pending criminal proceedings.

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
18 is not a new enactment.

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

1 Substances Act, or (4) an intoxicating compound listed in the
2 Use of Intoxicating Compounds Act in the employee's blood,
3 breath, or urine at the time the employee incurred the
4 accidental injury shall be considered in any hearing under
5 this Act to determine whether the employee was intoxicated at
6 the time the employee incurred the accidental injuries. If at
7 the time of the accidental injuries: (1) there was 0.08% or
8 more by weight of alcohol in the employee's blood, breath, or
9 urine; (2) there was a tetrahydrocannabinol concentration of 5
10 nanograms or more in the whole blood or 10 nanograms or more in
11 another bodily substance; (3) ~~or if~~ there is any evidence of
12 impairment due to the unlawful or unauthorized use of ~~(1)~~
13 cannabis, as defined in the Cannabis Control Act, ~~(2)~~ a
14 controlled substance listed in the Illinois Controlled
15 Substances Act, ~~or (3)~~ an intoxicating compound listed in the
16 Use of Intoxicating Compounds Act; or (4) ~~if~~ the employee
17 refuses to submit to testing of blood, breath, or urine, then
18 there shall be a rebuttable presumption that the employee was
19 intoxicated and that the intoxication was the proximate cause
20 of the employee's injury. Authorized use may be evidenced only
21 by written consent by the employer to the employee, which
22 consent shall not be unreasonably withheld. The employee may
23 overcome the rebuttable presumption by the preponderance of
24 the admissible evidence that the intoxication was not the sole
25 proximate cause or proximate cause of the accidental injuries.
26 Percentage by weight of alcohol in the blood shall be based on

1 grams of alcohol per 100 milliliters of blood. Percentage by
2 weight of alcohol in the breath shall be based upon grams of
3 alcohol per 210 liters of breath. Any testing that has not been
4 performed by an accredited or certified testing laboratory
5 shall not be admissible in any hearing under this Act to
6 determine whether the employee was intoxicated at the time the
7 employee incurred the accidental injury.

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

11 (1) compliance with the National Labor Relations Act
12 regarding collective bargaining agreements or regulations
13 promulgated by the United States Department of
14 Transportation;

15 (2) that samples are collected and tested in
16 conformance with national and State legal and regulatory
17 standards for the privacy of the individual being tested,
18 and in a manner reasonably calculated to prevent
19 substitutions or interference with the collection or
20 testing of reliable sample;

21 (3) that split testing procedures are utilized;

22 (4) that sample collection is documented, and the
23 documentation procedures include:

24 (A) the labeling of samples in a manner so as to
25 reasonably preclude the probability of erroneous
26 identification of test result; and

1 (B) an opportunity for the employee to provide
2 notification of any information which he or she
3 considers relevant to the test, including
4 identification of currently or recently used
5 prescription or nonprescription drugs and other
6 relevant medical information;

7 (5) that sample collection, storage, and
8 transportation to the place of testing is performed in a
9 manner so as to reasonably preclude the probability of
10 sample contamination or adulteration; and

11 (6) that chemical analyses of blood, urine, breath, or
12 other bodily substance are performed according to
13 nationally scientifically accepted analytical methods and
14 procedures.

15 The changes to this Section made by Public Act 97-18 apply
16 only to accidental injuries that occur on or after September
17 1, 2011.

18 (Source: P.A. 101-6, eff. 5-17-19.)