

# As Introduced

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H. B. No. 223

Representatives Gibbs, Cates, Schmidt, C. Evans, Calvert, Hagan, Aslanides,  
D. Evans, Buehrer, Setzer, Webster, McGregor, Raussen, Young, Faber,  
Peterson, Carmichael, Wolpert, Schlichter

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## A BILL

To amend section 4123.54 of the Revised Code to 1  
specify conditions under which chemical testing of 2  
an employee may establish a rebuttable presumption 3  
that the employee's injury was proximately caused 4  
by use of alcohol or an unprescribed controlled 5  
substance. 6

### BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

**Section 1.** That section 4123.54 of the Revised Code be 7  
amended to read as follows: 8

**Sec. 4123.54.** (A) Every employee, who is injured or who 9  
contracts an occupational disease, and the dependents of each 10  
employee who is killed, or dies as the result of an occupational 11  
disease contracted in the course of employment, wherever such 12  
injury has occurred or occupational disease has been contracted, 13  
provided the same were not: 14

(1) Purposely self-inflicted; or 15

(2) Caused by the employee being intoxicated or under the 16  
influence of a controlled substance not prescribed by a physician 17  
where the intoxication or being under the influence of the 18

controlled substance not prescribed by a physician was the 19  
proximate cause of the injury, is entitled to receive, either 20  
directly from the employee's self-insuring employer as provided in 21  
section 4123.35 of the Revised Code, or from the state insurance 22  
fund, the compensation for loss sustained on account of the 23  
injury, occupational disease, or death, and the medical, nurse, 24  
and hospital services and medicines, and the amount of funeral 25  
expenses in case of death, as are provided by this chapter. 26

(B) For the purpose of this section, ~~provided that an~~ 27  
~~employee is given or has been given notice that the results of, or~~ 28  
~~the employee's refusal to submit to, any chemical test described~~ 29  
~~under this division may affect the employee's eligibility for~~ 30  
~~compensation and benefits pursuant to this chapter and Chapter~~ 31  
~~4121. of the Revised Code,~~ there is a rebuttable presumption that 32  
an employee is intoxicated or under the influence of a controlled 33  
substance not prescribed by a the employee's physician and that 34  
being intoxicated or under the influence of a controlled substance 35  
not prescribed by a the employee's physician is the proximate 36  
cause of an injury ~~when~~ under either of the following conditions: 37

(1) When any one or more of the following is true: 38

~~(1)~~(a) The employee, through a qualifying chemical test 39  
administered within eight hours of an injury, is determined to 40  
have an alcohol concentration level equal to or in excess of the 41  
levels established in divisions (A)(2) to (7) of section 4511.19 42  
of the Revised Code; 43

~~(2)~~(b) The employee, through a qualifying chemical test 44  
administered within thirty-two hours of an injury, is determined 45  
to have one of the following controlled substances not prescribed 46  
by the employee's physician in the employee's system that tests 47  
above the following levels in an enzyme multiplied immunoassay 48  
technique screening test and above the levels established in 49  
division (B)(3) of this section in a gas chromatography mass 50

spectrometry test:	51
<del>(a)</del> (i) For amphetamines, one thousand nanograms per milliliter of urine;	52 53
<del>(b)</del> (ii) For cannabinoids, fifty nanograms per milliliter of urine;	54 55
<del>(c)</del> (iii) For cocaine, including crack cocaine, three hundred nanograms per milliliter of urine;	56 57
<del>(d)</del> (iv) For opiates, two thousand nanograms per milliliter of urine;	58 59
<del>(e)</del> (v) For phencyclidine, twenty-five nanograms per milliliter of urine.	60 61
<del>(3)</del> (c) The employee, through a <u>qualifying</u> 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:	62 63 64 65 66 67
<del>(a)</del> (i) For amphetamines, five hundred nanograms per milliliter of urine;	68 69
<del>(b)</del> (ii) For cannabinoids, fifteen nanograms per milliliter of urine;	70 71
<del>(c)</del> (iii) For cocaine, including crack cocaine, one hundred fifty nanograms per milliliter of urine;	72 73
<del>(d)</del> (iv) For opiates, two thousand nanograms per milliliter of urine;	74 75
<del>(e)</del> (v) For phencyclidine, twenty-five nanograms per milliliter of urine.	76 77
<del>(4)</del> (d) The employee, through a <u>qualifying</u> chemical test administered within thirty-two hours of an injury, is determined	78 79

to have barbiturates, benzodiazepines, methadone, or propoxyphene 80  
in the employee's system that tests above levels established by 81  
laboratories certified by the United States department of health 82  
and human services. 83

~~(5) The (2) When the~~ employee refuses to submit to a 84  
requested chemical test, on the condition that that employee is or 85  
was given notice that the refusal to submit to any chemical test 86  
described in division (B)(1) may affect the employee's eligibility 87  
for compensation and benefits under this chapter and Chapter 4121. 88  
of the Revised Code. 89

(C)(1) For purposes of division (B) of this section, a 90  
chemical test is a qualifying chemical test if it is administered 91  
to an employee after an injury under at least one of the following 92  
conditions: 93

(a) When the employee's employer had reasonable cause to 94  
suspect that the employee may be intoxicated or under the 95  
influence of a controlled substance not prescribed by the 96  
employee's physician; 97

(b) At the request of a police officer pursuant to section 98  
4511.191 of the Revised Code, and not at the request of the 99  
employee's employer; 100

(c) At the request of a licensed physician who is not 101  
employed by the employee's employer, and not at the request of the 102  
employee's employer. 103

(2) As used in division (C)(1)(a) of this section, 104  
"reasonable cause" means, but is not limited to, evidence that an 105  
employee is or was using alcohol or a controlled substance drawn 106  
from specific, objective facts and reasonable inferences drawn 107  
from these facts in light of experience and training. These facts 108  
and inferences may be based on, but are not limited to, any of the 109  
following: 110

(a) Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings; 111  
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(b) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness, or recurrent accidents, that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors; 117  
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(c) The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance; 123  
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(d) A report of use of alcohol or a controlled substance provided by a reliable and credible source; 126  
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(e) Repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors. 128  
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(D) Nothing in this section shall be construed to affect the rights of an employer to test employees for alcohol or controlled substance abuse. 134  
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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 137  
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performed in a state or states other than Ohio, the employer and 142  
the employee may agree to be bound by the laws of this state or by 143  
the laws of some other state in which all or some portion of the 144  
work of the employee is to be performed. The agreement shall be in 145  
writing and shall be filed with the bureau of workers' 146  
compensation within ten days after it is executed and shall remain 147  
in force until terminated or modified by agreement of the parties 148  
similarly filed. If the agreement is to be bound by the laws of 149  
this state and the employer has complied with this chapter, then 150  
the employee is entitled to compensation and benefits regardless 151  
of where the injury occurs or the disease is contracted and the 152  
rights of the employee and the employee's dependents under the 153  
laws of this state are the exclusive remedy against the employer 154  
on account of injury, disease, or death in the course of and 155  
arising out of the employee's employment. If the agreement is to 156  
be bound by the laws of another state and the employer has 157  
complied with the laws of that state, the rights of the employee 158  
and the employee's dependents under the laws of that state are the 159  
exclusive remedy against the employer on account of injury, 160  
disease, or death in the course of and arising out of the 161  
employee's employment without regard to the place where the injury 162  
was sustained or the disease contracted. 163

If any employee or the employee's dependents are awarded 164  
workers' compensation benefits or recover damages from the 165  
employer under the laws of another state, the amount awarded or 166  
recovered, whether paid or to be paid in future installments, 167  
shall be credited on the amount of any award of compensation or 168  
benefits made to the employee or the employee's dependents by the 169  
bureau. 170

If an employee is a resident of a state other than this state 171  
and is insured under the workers' compensation law or similar laws 172  
of a state other than this state, the employee and the employee's 173

dependents are not entitled to receive compensation or benefits 174  
under this chapter, on account of injury, disease, or death 175  
arising out of or in the course of employment while temporarily 176  
within this state, and the rights of the employee and the 177  
employee's dependents under the laws of the other state are the 178  
exclusive remedy against the employer on account of the injury, 179  
disease, or death. 180

Compensation or benefits are not payable to a claimant during 181  
the period of confinement of the claimant in any state or federal 182  
correctional institution whether in this or any other state for 183  
conviction of violation of any state or federal criminal law. 184

**Section 2.** That existing section 4123.54 of the Revised Code 185  
is hereby repealed. 186