

MAINE STATE LEGISLATURE

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L.D. 184

(Filing No. S- 182)

STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 118, L.D. 184, Bill, "An Act Clarifying Intoxication Under the Workers' Compensation Law"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 39 MRSA §61 is amended to read:

§61. Injury or death due to willful intention or intoxication

No compensation or other benefits shall ~~may~~ be allowed for the injury or death of an employee where it is proved that such ~~the injury or death~~ was occasioned by ~~his~~ the employee's willful intention to bring about the injury or death of ~~himself~~ the employee or of another, or that the same ~~injury or death~~ resulted from ~~his~~ the employee's intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew that the employee was intoxicated or that he ~~the employee~~ was in the habit of ~~becoming~~ being intoxicated while on duty.

1. Presumption that employee was intoxicated. If the employer proves that the employee at the time of the employee's death or injury had .15% or more by weight of alcohol in the employee's blood, it shall be presumed, in the absence of clear and convincing evidence to the contrary, that the employee was intoxicated while on duty. The failure of an employer to introduce evidence of the employee's blood-alcohol level does not preclude that employer from offering other evidence of intoxication.

2. Presumption that employee was not intoxicated. If the employee, or a representative of the employee, proves that the employee at the time of the employee's death or injury had less than .15% or more by weight of alcohol in the employee's blood, it shall be presumed, in the absence of clear and convincing evidence to the contrary, that the employee was not intoxicated while on duty. The failure of an employee, or a representative

1 of the employee, to introduce evidence of the employee's
2 blood-alcohol level does not preclude that employee or
3 representative from offering other evidence indicating that the
4 employee was not intoxicated.

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6 3. Imposition of blood test. No employer may require an
7 employee to provide a blood sample immediately after an accident
8 or injury occurring while the employee was on duty for the
9 purpose of conducting a blood-alcohol test to determine whether
10 the employee was intoxicated at the time of the accident or
11 injury. This subsection does not prohibit the taking of a blood
12 sample during routine physical examinations, when needed due to a
13 medical emergency or when the employee consents.

14 **Sec. 2. 39 MRSA §64-A, as amended by PL 1973, c. 788, §229,**
15 **is further amended to read:**

16
17 **§64-A. When employee killed or unable to testify**

18
19 In any claim for compensation, where the employee has been
20 killed, or is physically or mentally unable to testify, there
21 shall be a rebuttable presumption that the employee received a
22 personal injury arising out of and in the course of his the
23 employee's employment, that sufficient notice of the injury has
24 been given, and that the injury or death was not occasioned by
25 the employee's willful intention ~~of--the--employee to injure--or~~
26 ~~kill-himself~~ bring about the injury or death of the employee or
27 another and that the injury or death did not result from the
28 employee's intoxication while on duty.'
29

30
31 **STATEMENT OF FACT**

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33 This amendment completely replaces the original bill and
34 makes the following changes.

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36 1. The amendment clarifies that an employer cannot raise
37 the defense of employee intoxication if the employer knew that
38 the employee was in the habit of being intoxicated while on duty,
39 not simply that the employee habitually became intoxicated while
40 on duty. This ensures that the defense is not available to an
41 employer who knowingly acquiesces to an employee's habitual
42 arrival at work in an intoxicated state.

43
44 2. The amendment limits the presumption created by a
45 blood-alcohol test result to the fact of intoxication only. The
46 employer retains the burden of proving that the accident was
47 actually caused by that intoxication. The amendment also
48 clarifies that if the employee dies or is unable to testify as a
49 result of the injury, the death or injury is presumed to have
50 arisen out of and in the course of employment and was not caused
51 by the employee's intoxication. An employer may rebut this
52 presumption through additional evidence.
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COMMITTEE AMENDMENT "A " to S.P. 118, L.D. 184

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3. The amendment raises the presumptive level of intoxication to .15% by weight of alcohol in the blood.

4. The amendment clarifies that a blood-alcohol test result below the presumptive limit creates a similar presumption that the employee was not intoxicated.

5. The amendment prevents an employer from requiring an employee to provide a blood sample after a workplace accident or injury for testing to determine whether the employee was intoxicated at the time. This provision is not intended to prevent the taking of blood samples during routine physical examinations, during a medical emergency or when the employee consents. This provision also does not prevent an employer's use of a breathalyzer or similar test that does not require a blood sample.

6. Finally, the amendment clarifies that a party's failure to introduce the results of a blood-alcohol test does not preclude that party from offering other evidence of intoxication or nonintoxication.

Reported by Senator Esty for the Committee on Labor.
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(5/30/89) (Filing No. S-182)