

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1018

H.P. 713

House of Representatives, March 11, 1991

Received by the Clerk of the House on March 7, 1991. Referred to the Committee on Labor and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.

Cosponsored by Representative ADAMS of Portland, Representative McHENRY of Madawaska and Senator CONLEY of Cumberland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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An Act Clarifying Intoxication under the Workers' Compensation Law.

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Be it enacted by the People of the State of Maine as follows:

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 ~~does~~ 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 at the time of the employee's death or injury there was .15% or more by weight of alcohol in the employee's blood, it must 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 there was at the time of the employee's death or injury less than .15% or more by weight of alcohol in the employee's blood, it must 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 of the employee to introduce evidence of the employee's blood-alcohol level does not preclude that employee or representative from offering other evidence indicating that the employee was not intoxicated.

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

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

In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, there shall ~~be~~ is a rebuttable presumption that the employee received a personal injury arising out of and in the course of ~~his~~ the employee's employment, that sufficient notice of the injury has been given, and that the injury or death was not occasioned by the employee's willful intention ~~of the employee~~ to ~~injure or~~

2 kill-himself bring about the injury or death of the employee or  
4 another and that the injury or death did not result from the  
6 employee's intoxication while on duty.

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**STATEMENT OF FACT**

This bill accomplishes the following.

1. It clarifies that an employer can not raise the defense of employee intoxication if the employer knew that the employee was in the habit of being intoxicated while on duty, not simply that the employee habitually became intoxicated while on duty. This ensures that the defense is not available to an employer who knowingly acquiesces to an employee's habitual arrival at work in an intoxicated state.

2. It limits the presumption created by a blood-alcohol test result to the fact of intoxication only. The employer retains the burden of proving that the accident was actually caused by that intoxication. The bill also clarifies that if the employee dies or is unable to testify as a result of the injury, the death or injury is presumed to have arisen out of and in the course of employment and was not caused by the employee's intoxication. An employer may rebut this presumption through additional evidence.

3. It establishes a presumptive standard of intoxication as .15% or more by weight of alcohol in the blood.

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

5. Finally, it 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.