

Department of Planning and Budget

2002 Fiscal Impact Statement

1. Bill Number HB568

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Byron

3. Committee Commerce and Labor

4. Title Workers' compensation; disallowance of compensation.

5. Summary/Purpose: This proposal clarifies that when an employee is injured and is found to either have had a blood alcohol level equal to or greater than the legal standard or have been tested positive for the presence of nonprescription controlled substances at the time of a workplace accident, then it is the employee's responsibility to provide "clear and convincing" evidence that this injury is not the result of intoxication. Currently, if an employee is found to be intoxicated at the time of a workplace accident, that employee is not eligible for workers' compensation benefits. This proposal shifts the burden of proof from the employer, who was previously responsible for demonstrating that the employee was intoxicated at the time of the accident, to the employee.

6. Fiscal Impact is INDETERMINATE.

7. Budget amendment necessary: No.

8. Fiscal implications: Although the fiscal implications of this bill cannot be determined, it could reduce the defense costs and payments that would otherwise have been incurred by the Workers' Compensation Program managed by the Department of Human Resource Management. According to the staff of the Workers' Compensation Program, under existing statute, the employer must obtain statements from an injured employee's attending physician or toxicologist indicating that the person was intoxicated at the time of the accident, that the injured employee's agility, coordination, judgment, and memory would have been severely impaired, and that the accident could have been prevented if the employee had not been intoxicated. Staff state this proposal would reduce an employer's costs for obtaining this material by shifting the responsibility for rebutting the presumption about intoxication to the employee. In addition, staff report that workers' compensation claims paid to employees who were intoxicated at the time of a workplace accident would decrease, because the employee would now be responsible for proving he was not intoxicated rather than the Commonwealth responsible for proving that the employee was intoxicated. However, the total reduction in defense costs or claims paid to employees in such situations cannot be determined. Finally, it should be noted that all employers could enjoy similar cost reductions to those the Workers' Compensation Program staff expect.

9. Specific agency or political subdivisions affected: All employers, including the Commonwealth, would be affected by this proposal.

10. Technical amendment necessary: None.

11. Other comments: This proposal standardizes the laboratory requirements for testing whether an injured employee's blood alcohol level exceeds the legal requirement or whether they have been abusing nonprescription, controlled substances. This could benefit employees who find themselves in a possible intoxication-related workplace accident.

Date: 02/27/02/PXV

Document: G:\2002 Legislation\House bills\HB568.Doc

cc: Secretary of Administration