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## **ACLU OF RI POSITION: AMEND**

### **TESTIMONY ON 21-H 5473, RELATING TO WORKERS' COMPENSATION BENEFITS February 24, 2021**

This bill makes numerous changes to the workers' compensation statutes. The ACLU of Rhode Island has no position on those changes except for one, and that is the amendment in the first section of the bill on Page 1 addressing injuries on the job "by willful intent or intoxication."

The ACLU of RI has deep concerns about this section of this bill, which would create a presumption of intoxication if a person is injured or dies on the job and is found, through a blood test, to have alcohol, an unlawfully prescribed drug or a prescribed drug not used properly in their system. We urge the deletion of this section.

We believe the presumption created by this section – both that the person was intoxicated and the intoxication caused the injury – is unfair and improper for a number of reasons. Each presumption by itself is questionable; doubling the presumption is doubly problematic. Consider, for example, a person's use of medical marijuana. Since it is not a drug prescribed by a medical practitioner, any presence of it in a person's blood would constitute an automatic presumption of intoxication that the person would need to try to rebut. Worse, of course, the person would have to disprove not one, but two negatives, a daunting task in almost any circumstance. Allowing the presence of marijuana, whether medical or not, to create this presumption is unfair for another reason: it is well known that marijuana metabolites can stay in a person's system for weeks, whereas traces of hard drugs like cocaine usually are flushed out of the body within 48 hours.

While marijuana presents a good example of why this provision is unjust, we feel the bill's placement of the burden of proof on the employee for *any* alleged drug or alcohol use is inappropriate, and makes it too easy for employers to get off the hook for workplace injuries. Even for people taking prescribed drugs, it is difficult to understand how this would work, since somebody would have to determine from a blood test whether the medication was "used in accordance with the prescribed use of the drug."

Finally, we question this bill's compliance with current state law. With only a few exceptions, the state's employment drug testing statute bars drug testing in the workplace unless the "employer has reasonable grounds to believe based on specific aspects of the employee's job performance and specific contemporaneous documented observations, concerning the employee's appearance, behavior or speech that the employee may be under

the influence of a controlled substance, which may be impairing his or her ability to perform his or her job.” R.I.G.L. §28-6.5-1(a)(1). In and of itself, a workplace injury does not authorize drug testing, and the statute clearly puts the burden on the employer, not employee, to provide grounds for authorizing a test. Adoption of this provision would severely undermine the important privacy and dignity principles underlying the state’s longstanding drug testing statute.

For all these reasons, we urge rejection of the amendment made to R.I.G.L. §28-33-2 on Page 1 of the bill.

Submitted by: Steven Brown, Executive Director