

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

L.D. 1760

DATE: 2-23-04

(Filing No. H-711 )

LABOR

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
121ST LEGISLATURE  
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1282, L.D. 1760, Bill, "An Act To Amend the Random Drug Testing Laws"

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

**Sec. 1. 26 MRSA §683, sub-§2**, as amended by PL 2001, c. 556, §2, is further amended by amending the first paragraph to read:

**2. Written policy.** Before establishing any substance abuse testing program, an employer must develop or, as required in section 684, subsection 3, paragraph C, must appoint an employee committee to develop a written policy in compliance with this subchapter providing for, at a minimum:

**Sec. 2. 26 MRSA §684, sub-§3**, as amended by PL 2001, c. 706, §1, is further amended to read:

**3. Random or arbitrary testing of employees.** In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if ~~at-least-one-of-the-following-conditions-is-met:~~

2 A. The employer and the employee have bargained for  
3 provisions in a collective bargaining agreement, either  
4 before or after the effective date of this subchapter, that  
5 provide for random or arbitrary testing of employees. A  
6 random or arbitrary testing program that would result from  
7 implementation of an employer's last best offer is not  
8 considered a provision bargained for in a collective  
9 bargaining agreement for purposes of this section; or

10 B. The employee works in a position the nature of which  
11 would create an unreasonable threat to the health or safety  
12 of the public or the employee's ~~co-workers~~ coworkers if the  
13 employee were under the influence of a substance of abuse.  
14 It is the intent of the Legislature that the requirements of  
15 this paragraph be narrowly construed; or

16 C. The employer has established a random or arbitrary  
17 testing program under this paragraph that applies to all  
18 employees, except as provided in subparagraph (4),  
19 regardless of position.

22 (1) An employer may establish a testing program under  
23 this paragraph only if the employer has 50 or more  
24 employees who are not covered by a collective  
25 bargaining agreement.

26 (2) The written policy required by section 683,  
27 subsection 2 with respect to a testing program under  
28 this paragraph must be developed by a committee of at  
29 least 10 of the employer's employees. The employer  
30 shall appoint members to the committee from a  
31 cross-section of employees who are eligible to be  
32 tested. The committee must include a medical  
33 professional who is trained in procedures for testing  
34 for substances of abuse. If no such person is employed  
35 by the employer, the employer shall obtain the services  
36 of such a person to serve as a member of the committee  
37 created under this subparagraph.

38 (3) The written policy developed under subparagraph  
39 (2) must also require that selection of employees for  
40 testing be performed by a person or entity not subject  
41 to the employer's influence, such as a medical review  
42 officer. Selection must be made from a list, provided  
43 by the employer, of all employees subject to testing  
44 under this paragraph. The list may not contain  
45 information that would identify the employee to the  
46 person or entity making the selection.

47 (4) Employees who are covered by a collective  
48 bargaining agreement are not included in testing  
49

2 programs pursuant to this paragraph unless they agree  
3 to be included pursuant to a collective bargaining  
4 agreement as described under paragraph A.

5 (5) Before initiating a testing program under this  
6 paragraph, the employer must obtain from the Department  
7 of Labor approval of the policy developed by the  
8 employee committee, as required in section 686. If the  
9 employer does not approve of the written policy  
10 developed by the employee committee, the employer may  
11 decide not to submit the policy to the department and  
12 not to establish the testing program. The employer may  
13 not change the written policy without approval of the  
14 employee committee.

15 (6) The employer may not discharge, suspend, demote,  
16 discipline or otherwise discriminate with regard to  
17 compensation or working conditions against an employee  
18 for participating or refusing to participate in an  
19 employee committee created pursuant to this paragraph.

20  
21 **Sec. 3. 26 MRSA §685, sub-§2, ¶B,** as amended by PL 1989, c.  
22 832, §12, is further amended to read:

23  
24 B. Before taking any action described in paragraph A in the  
25 case of an employee who receives an initial confirmed  
26 positive result, an employer shall provide the employee with  
27 an opportunity to participate for up to 6 months in a  
28 rehabilitation program designed to enable the employee to  
29 avoid future use of a substance of abuse and to participate  
30 in an employee assistance program, if the employer has such  
31 a program. The employer may take any action described in  
32 paragraph A if the employee receives a subsequent confirmed  
33 positive result from a test administered by the employer  
34 under this subchapter.'

35

36

### 37 SUMMARY

38  
39 This amendment replaces the bill and clarifies the intent of  
40 the bill. It amends the State's workplace substance abuse  
41 testing laws to provide employers of 50 or more nonunionized  
42 employees another option for establishing a random or arbitrary  
43 substance abuse testing program. Under current law, random or  
44 arbitrary testing programs may be imposed only on persons in  
45 safety-sensitive positions or pursuant to a collective bargaining  
46 agreement. This allows certain employers a 3rd option: a random  
47 or arbitrary substance abuse testing program that applies to all  
48 employees, regardless of position. Unionized employees

COMMITTEE AMENDMENT "A" to H.P. 1282, L.D. 1760

2 would be included in such a testing program only if inclusion is  
part of their collective bargaining agreement.

4 If the employer wishes to conduct testing under this new 3rd  
option, the employer must form an employee committee to write the  
6 policies regarding the testing program. The committee must be  
composed of a cross-section of employees subject to the test and  
8 must include a medical professional trained in substance abuse  
testing. Determination of which employees will be tested at any  
10 one time must be made by a person or entity independent from  
employer influence, such as a medical review officer.

12  
14 The amendment also requires that a person with a confirmed  
positive test be allowed to participate in an employee assistance  
program, if the employer has such a program.

FISCAL NOTE REQUIRED  
(See attached)

Approved: 02/17/03 *MAC*

**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 1760**

**An Act To Amend the Random Drug Testing Laws**



**LR 2275(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Labor**

**Fiscal Note Required: Yes**

---

**Fiscal Note**

Minor cost increase - General Fund

**Fiscal Detail and Notes**

Additional costs to the Department of Labor can be absorbed utilizing existing budgeted resources.