# MAINE STATE LEGISLATURE

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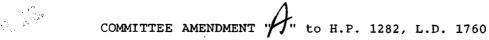
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	L.D. 1760
2	DATE: 2-23-04 (Filing No. H-711)
4	(Filling No. H= ***)
6	LABOR
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10	Reproduced and distributed under the direction of the Clerk of the House.
12	STATE OF MAINE
14	HOUSE OF REPRESENTATIVES 121ST LEGISLATURE
16	SECOND SPECIAL SESSION
18	COMMITTEE AMENDMENT "A" to H.P. 1282, L.D. 1760, Bill, "An
20	Act To Amend the Random Drug Testing Laws"
22	Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the
24	following:
26	'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:
28	<ol><li>Written policy. Before establishing any substance abuse</li></ol>
30	testing program, an employer must develop or, as required in section 684, subsection 3, paragraph C, must appoint an employee
32	<pre>committee to develop a written policy in compliance with this subchapter providing for, at a minimum:</pre>
34	Sec. 2. 26 MRSA §684, sub-\$3, as amended by PL 2001, c. 706,
36	§1, is further amended to read:
38	3. Random or arbitrary testing of employees. In addition

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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:



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	A. The employer and the employee have bargained for
2	provisions in a collective bargaining agreement, either
	before or after the effective date of this subchapter, that
4	provide for random or arbitrary testing of employees. A
	random or arbitrary testing program that would result from
6	implementation of an employer's last best offer is not
	considered a provision bargained for in a collective
8	bargaining agreement for purposes of this section; er
10	B. The employee works in a position the nature of which
	would create an unreasonable threat to the health or safety
12	of the public or the employee's ee-werkers coworkers if the
	employee were under the influence of a substance of abuse.
14	It is the intent of the Legislature that the requirements of
11	this paragraph be narrowly construed. or
16	chis paragraph be harrowly constitued.
10	
	C. The employer has established a random or arbitrary
18	testing program under this paragraph that applies to all
	employees, except as provided in subparagraph (4),
20	regardless of position.
22	(1) An employer may establish a testing program under
22	(1) An employer may establish a testing program under
	this paragraph only if the employer has 50 or more
24	employees who are not covered by a collective
	bargaining agreement.
26	
	(2) The written policy required by section 683,
28	subsection 2 with respect to a testing program under
	this paragraph must be developed by a committee of at
30	least 10 of the employer's employees. The employer
	shall appoint members to the committee from a
32	cross-section of employees who are eligible to be
	tested. The committee must include a medical
34	professional who is trained in procedures for testing
	for substances of abuse. If no such person is employed
36	by the employer, the employer shall obtain the services
30	of such a person to serve as a member of the committee
38	created under this subparagraph.
30	created under chis subparagraph.
4.0	(2) 71 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
40	(3) The written policy developed under subparagraph
	(2) must also require that selection of employees for
42	testing be performed by a person or entity not subject
	to the employer's influence, such as a medical review
44	officer. Selection must be made from a list, provided
	by the employer, of all employees subject to testing
46	under this paragraph. The list may not contain
	information that would identify the employee to the
48	person or entity making the selection.

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

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

2	<pre>programs pursuant to this paragraph unless they agree to be included pursuant to a collective bargaining</pre>
4	agreement as described under paragraph A.
4	agreement as described under paragraph A.
_	(5) Before initiating a testing program under this
6	paragraph, the employer must obtain from the Department
	of Labor approval of the policy developed by the
8	employee committee, as required in section 686. If the
	employer does not approve of the written policy
10	developed by the employee committee, the employer may
1.0	decide not to submit the policy to the department and not to establish the testing program. The employer may
12	not to establish the testing program. The employer may not change the written policy without approval of the
14	employee committee.
	<u> </u>
16	(6) The employer may not discharge, suspend, demote,
	discipline or otherwise discriminate with regard to
18	compensation or working conditions against an employee
	for participating or refusing to participate in ar
20	employee committee created pursuant to this paragraph.
22	Sec. 3. 26 MRSA §685, sub-§2, ¶B, as amended by PL 1989, c.
22	832, §12, is further amended to read:
24	032, 312, 13 further amended to read.
	B. Before taking any action described in paragraph A in the
26	case of an employee who receives an initial confirmed
	positive result, an employer shall provide the employee with
28	an opportunity to participate for up to 6 months in a
	rehabilitation program designed to enable the employee to
30	avoid future use of a substance of abuse and to participate
32	in an employee assistance program, if the employer has such
32	a program. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed
34	positive result from a test administered by the employer
-	under this subchapter.'
36	<u> </u>
38	SUMMARY
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40	This amendment replaces the bill and clarifies the intent of
42	the bill. It amends the State's workplace substance abuse testing laws to provide employers of 50 or more nonunionized
74	employees another option for establishing a random or arbitrary

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substance abuse testing program. Under current law, random or arbitrary testing programs may be imposed only on persons in

safety-sensitive positions or pursuant to a collective bargaining agreement. This allows certain employers a 3rd option: a random

or arbitrary substance abuse testing program that applies to all

position.

Unionized

employees, regardless of

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

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

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

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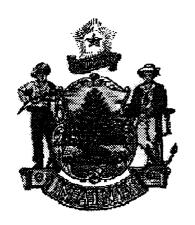
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The amendment also requires that a person with a confirmed positive test be allowed to participate in an employee assistance program, if the employer has such a program.

FISCAL NOTE REQUIRED (See attached)

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## 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.