

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
128<sup>TH</sup> LEGISLATURE  
FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON LABOR, COMMERCE,  
RESEARCH AND ECONOMIC DEVELOPMENT**

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# STATE OF MAINE

128<sup>TH</sup> LEGISLATURE

FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contain summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Special, Second Regular and Second Special Sessions of the 128<sup>th</sup> Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

*CARRIED OVER*..... carried over to a subsequent session of the Legislature  
*CON RES XXX*..... chapter # of constitutional resolution passed by both houses  
*CONF CMTE UNABLE TO AGREE*..... Committee of Conference unable to agree; legislation died  
*DIED BETWEEN HOUSES*..... House & Senate disagreed; legislation died  
*DIED IN CONCURRENCE*..... defeated in each house, but on different motions; legislation died  
*DIED ON ADJOURNMENT*..... action incomplete when session ended; legislation died  
*EMERGENCY*..... enacted law takes effect sooner than 90 days after session adjournment  
*FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE*..... emergency failed to receive required 2/3 vote  
*FAILED, ENACTMENT or FINAL PASSAGE*..... failed to receive final majority vote  
*FAILED, MANDATE ENACTMENT*..... legislation proposing local mandate failed required 2/3 vote  
*HELD BY GOVERNOR*..... Governor has not signed; final disposition to be determined at subsequent session  
*LEAVE TO WITHDRAW*..... sponsor's request to withdraw legislation granted  
*NOT PROPERLY BEFORE THE BODY*..... ruled out of order by the presiding officer; legislation died  
*INDEF PP*..... indefinitely postponed; legislation died  
*ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X*... ought-not-to-pass report accepted; legislation died  
*P&S XXX*..... chapter # of enacted private & special law  
*PUBLIC XXX*..... chapter # of enacted public law  
*RESOLVE XXX*..... chapter # of finally passed resolve  
*VETO SUSTAINED*..... Legislature failed to override Governor's veto

The effective dates for non-emergency legislation enacted in the First Special, Second Regular or Second Special Sessions of the 128<sup>th</sup> Legislature are: Monday, February 5, 2018; Wednesday, August 1, 2018; and Thursday, December 13, 2018, respectively. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

***Joint Standing Committee on Labor, Commerce, Research and Economic Development***

The amendment also establishes a special minimum wage applicable to unemancipated minors under 18 years of age for the first 200 work hours of employment. This wage must be at least the minimum wage required by the federal Fair Labor Standards Act or 80% of the generally applicable minimum wage under state law, whichever is greater.

**Senate Amendment "A" To Committee Amendment "A" (S-428)**

This amendment changes the timing for minimum wage increases by starting with \$10.50 per hour on January 1, 2019 and increasing it by 50¢ per hour each year until it reaches \$12.00 per hour on January 1, 2022. Starting January 1, 2023 and annually thereafter the minimum wage is increased by any increase in the cost of living as measured by the federal Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W. The amendment also strikes from Committee Amendment "A" the provisions that establish a special minimum wage applicable to unemancipated minors under 18 years of age for the first 200 work hours of employment. The amendment also removes the emergency preamble and emergency clause.

**LD 1768      An Act To Reduce Impairment on the Job and Improve Workplace Safety by Amending the Laws Governing Employment Practices Concerning Substance Use Testing      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
VOLK A	ONTP	

This bill makes changes to the laws governing employment practices concerning substance abuse testing, including the following.

1. It replaces the phrases "substance abuse test" and "substance abuse testing" with "substance use test" and "substance use testing" to reflect current usage.
2. It repeals a section of law that addresses nuclear power plants since there are no operating nuclear power plants in this State.
3. It narrows the definition of "employee" and provides that a full-time employee is an employee who works at least 36 hours a week.
4. It authorizes an employer that has employees subject to a federally mandated substance use testing program to extend federal drug testing activities to its entire workforce in order to maintain a single testing program and specifies that the employer must prepare a substance use testing plan for employees who are not federally regulated, provide a copy of the plan to the employees and the Department of Labor before testing, follow federal notification and procedural protocols for such employees and annually report the results of testing to the department.
5. It streamlines the current substance use testing policy approval by requiring the Department of Labor to develop a uniform impairment and substance use testing policy applicable to all employers. Employers must certify their adoption of the policy and be approved by the Department of Labor prior to conducting substance use testing.
6. It removes the "probable cause" standard and replaces it with an "impairment detection" standard required before the employer may conduct substance use testing. For employers authorized to conduct substance use testing, only an employer or employee approved for impairment detection by the Department of Labor or a licensed physician or nurse may make an impairment detection. This detection may be based on a single work-related accident, unlike the "probable cause" standard under current law. The employer may immediately remove the employee from the workplace pending resolution of the impairment detection.
7. It adds an "impairment determination" process that may be used as an alternative or in addition to a substance

## ***Joint Standing Committee on Labor, Commerce, Research and Economic Development***

use test. Under this process, an occupational health care provider conducts a medical review in order to confirm the impairment detection, which may include a substance use test that includes testing for prescription drugs. If the impairment is confirmed, the employer may take employment action including firing or disciplining the employee, subject to any limitations under the Maine Human Rights Act and any other state or federal law. If the occupational health care provider finds that the employee was not impaired or that such impairment did not pose a safety risk, the employee is entitled to full reinstatement to the employee's position.

8. It adds a violation of an established drug-free workplace policy as grounds for employment action and provides for a treatment period of 12 weeks at the employee's expense.

9. It eliminates the requirement that, prior to establishing a substance use testing program, an employer with over 20 full-time employees have a functioning employee assistance program and instead authorizes employers to have an employee assistance program.

10. It expands the number of establishments that may undertake companywide random substance use testing by authorizing such testing for companies with 10 or more employees instead of with 50 or more employees, as is the current standard.

11. It provides that a confirmed positive substance use test may be reported to the employee only by a medical review officer and allows an employee to provide a legitimate medical explanation for a positive test result for legally obtained medications, preventing the medical review officer from reporting a positive test for that substance to the employer.

12. It allows testing laboratories to use federal testing standards.

13. It adds a new civil violation for any employer noncompliance with the substance use testing laws, for which a fine of not more than \$500 for the first violation, \$750 for the second violation and \$1,000 for the third and subsequent violations may be adjudged.

### **LD 1769     An Act To Conform the Laws Regarding a Salaried Employee Who Is Exempt from Overtime and Minimum Wage Requirements to Federal Law**

**Died Between Houses**

Sponsor(s)

VOLK A

Committee Report

ONTP  
OTP-AM

Amendments Adopted

This bill amends the description of a salaried employee for the laws governing limits on mandatory overtime and the definition of "employee" in the laws governing minimum wages to conform with the federal guidelines established by the United States Department of Labor under the federal Fair Labor Standards Act. It sets the minimum salary at the threshold established by the United States Department of Labor under that Act. It eliminates the requirement that the salary threshold be tied to the state minimum wage.

#### **Committee Amendment "A" (S-404)**

This amendment is the minority report of the committee. It strikes and replaces the bill, amending the description of a salaried employee in the laws governing exemptions to limits on mandatory overtime and the definition of "employee" in the laws governing exemptions to the minimum wage by eliminating any increase to the salary threshold due to the cost-of-living adjustment to the minimum wage after January 1, 2020.