

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 electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



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

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

June 2012

MEMBERS:

SEN. CHRISTOPHER W. RECTOR, CHAIR
SEN. THOMAS H. MARTIN, JR.
SEN. TROY DALE JACKSON

REP. KERRI L. PRESCOTT, CHAIR
REP. DANA L. DOW
REP. MELVIN NEWENDYKE
REP. AMY FERN VOLK
*REP. FREDERICK L. WINTLE
REP. JOHN L. TUTTLE, JR.
REP. TIMOTHY E. DRISCOLL
REP. PAUL E. GILBERT
REP. ROBERT B. HUNT
REP. ERIN D. HERBIG

STAFF:

CAROLYN RUSSO, LEGISLATIVE ANALYST
NATALIE HAYNES, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

* REPLACED LATE IN THE SESSION BY REP. ANDRE E. CUSHING III

STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th 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. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

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

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

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. 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

This amendment requires the Department of Labor, by January 15, 2017, to review the status of labor relations in this State between agricultural employees and large agricultural employers, assess the impact of changes to the laws contained in this legislation and develop any recommendations necessary to promote agreements between agricultural employers and agricultural employees to limit industrial strife, promote stability in the farm labor force and improve the economic status of workers and businesses. The department is directed to submit its recommendations, together with any necessary implementing legislation, to the joint standing committee of the Legislature having jurisdiction over labor matters and the joint standing committee is authorized to submit legislation to the First Regular Session of the 128th Legislature.

Enacted Law Summary

Public Law 2011, chapter 565 repeals Maine Revised Statutes, Title 26, chapter 16, Agricultural Employees Labor Relations Act.

Public Law 2011, chapter 565 also requires the Department of Labor, by January 15, 2017, to review the status of labor relations in this State between agricultural employees and large agricultural employers, assess the impact of changes to the laws contained in this legislation and develop any recommendations necessary to promote agreements between agricultural employers and agricultural employees to limit industrial strife, promote stability in the farm labor force and improve the economic status of workers and businesses. The department is directed to submit its recommendations, together with any necessary implementing legislation, to the joint standing committee of the Legislature having jurisdiction over labor matters and the joint standing committee is authorized to submit legislation to the First Regular Session of the 128th Legislature.

LD 1314

An Act To Standardize the Definition of "Independent Contractor"

PUBLIC 643

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
TILTON PLOWMAN	OTP-AM MAJ ONTP MIN	H-832 H-897 PRESCOTT H-916 MARTIN J

This bill was carried over from the First Regular Session of the 125th Legislature.

It standardizes the definition of "independent contractor" for employment security law and workers' compensation law. It considers who directs or controls the means and manner of providing the contracted services; who furnishes the tools and equipment necessary to provide the services; whether the business is considered inseparable from the individual for purposes of taxes, profits and liabilities; who exercises control over the management and operations of the business; and who exercises the right and opportunity to perform the services of the business for multiple entities.

Committee Amendment "A" (H-832)

This amendment, which is the majority report of the committee, standardizes the definition of "independent contractor" for employment security law and workers' compensation law. It clearly states the penalties for the misclassification of a worker as an independent contractor. The amendment also requires 2 interim reports and a final comprehensive report to the joint standing committee of the Legislature having jurisdiction over labor matters from the Workers' Compensation Board and the Department of Labor on the implementation of the new independent contractor definition.

House Amendment "B" To Committee Amendment "A" (H-897)

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

This amendment specifies that a construction subcontractor is considered an independent contractor only if that person meets the definition of independent contractor.

House Amendment "C" To Committee Amendment "A" (H-916)

This amendment specifies that independent contractors who hire and pay employees are subject to the Maine Workers' Compensation Act of 1992.

Enacted Law Summary

Public Law 2011, chapter 643 standardizes the definition of "independent contractor" for employment security law and workers' compensation law. A person who performs services for remuneration is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit, both under the person's contract of service and in fact. A person must meet all of the following criteria:

1. The person has the essential right to control the means and progress of the work except as to final results;
2. The person is customarily engaged in an independently established trade, occupation, profession or business;
3. The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
4. The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
5. The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted; and

In addition to the criteria above, at least 3 of the following criteria must be met:

1. The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
2. The person is not required to work exclusively for the other individual or entity;
3. The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
4. The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
5. Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
6. The work is outside the usual course of business for which the service is performed; or
7. The person has been determined to be an independent contractor by the federal Internal Revenue Service.

Public Law 2011, chapter 643 clearly states the penalties for the misclassification of a worker as an independent contractor. It also requires 2 interim reports and a final comprehensive report to the joint standing committee of the Legislature having jurisdiction over labor matters from the Workers' Compensation Board and the Department of Labor on the implementation of the new independent contractor definition.