

MAINE STATE LEGISLATURE

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STATE OF MAINE
118TH LEGISLATURE

SECOND REGULAR SESSION
AND
SECOND SPECIAL SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
JUDICIARY

MAY 1998

MEMBERS:

Sen. Susan W. Longley, Chair

Sen. Lloyd P. LaFountain III

Sen. John W. Benoit

Rep. Richard H. Thompson, Chair

Rep. Elizabeth Watson

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**ONE HUNDRED EIGHTEENTH LEGISLATURE
SECOND REGULAR AND SECOND SPECIAL SESSIONS**

**Summary Of Legislation Before The Joint Standing Committees
May 1998**

We are pleased to provide this summary of bills that were considered by the Joint Standing Committees of the Maine Legislature. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CON RES XXX..... Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE.....Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES.....House & Senate disagree; bill died
DIED IN CONCURRENCE.....One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT.....Action incomplete when session ended; bill died
EMERGENCY.....Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE.....Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE.....Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....Bill imposing local mandate failed to get 2/3 vote
INDEF PP.....Bill Indefinitely Postponed
ONTP..... Ought Not To Pass report accepted
OTP ND..... Committee report Ought To Pass In New Draft
OTP ND/NT..... Committee report Ought To Pass In New Draft/New Title
P&S XXX..... Chapter # of enacted Private & Special Law
PUBLIC XXX..... Chapter # of enacted Public Law
RESOLVE XXX..... Chapter # of finally passed Resolve
UNSIGNED.....Bill held by Governor
VETO SUSTAINED.....Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is June 30, 1998 and July 9, 1998 for the Second Special Session. Second Special Session laws include Public Laws beginning with Chapter 718, Private and Special Laws beginning with Chapter 82 and Resolves beginning with Chapter 117.

current law, whether professional negligence occurred. The bill also proposed to change the current law's confidentiality provisions concerning testimony and other evidence presented to screening panels. See also LD 1050 and LD 1784.

LD 869 **An Act to Amend the Statute of Limitations for Health Care Providers and Health Care Practitioners to Include a Discovery Rule** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
RAND	ONTP MAJ OTP-AM MIN	

LD 869 proposed to enact a discovery rule with respect to the statute of limitations relating to health care providers and health care practitioners. The bill would have required an action for professional negligence to be commenced within 3 years after a plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act of professional negligence of which the plaintiff complains.

Committee Amendment "A" (S-541) (Minority Report) proposed to replace the bill. It proposed to create a modified discovery rule for medical malpractice actions. It proposed that an action for professional negligence be brought within 3 years after the cause of action accrues, but not more than 6 years after the date of the act or omission of the health care provider or the health care practitioner that caused the injury. The cause of action would accrue when the plaintiff discovers or reasonably should have discovered the injury and the fact that the injury was caused by the act or omission of the health care provider or the health care practitioner. The 6-year maximum limitation would have applied in all cases other than causes of action related to foreign objects and cases in which a minor is the injured party. (Not adopted)

LD 916 **An Act to Allow Physician-assisted Deaths for the Terminally Ill** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BROOKS MITCHELL B	ONTP MAJ OTP-AM MIN	

LD 916 proposed to create the Death with Dignity Act. It would have allowed a mentally competent adult who is suffering from a terminal illness to request and obtain medication from a physician to end that patient's own life in a humane and dignified manner. The bill proposed safeguards to ensure that the patient's request is voluntary and based on an informed decision.

Committee Amendment "A" (H-788) (Minority Report) proposed to require that the counseling in which a patient participates include a discussion of choosing to die. It would have expanded the definition of "next of kin" to include an adult who has exhibited special concern for the patient and who is familiar with the patient's personal values. The amendment proposed to allocate appropriate authority to spouses and partners of a patient covered by the bill. The amendment would have given the physician the option of being present when the medication to end the patient's life is administered or ensuring that a member of the patient's next of kin is present. (Not adopted)

House Amendment "A" (H-790) proposed to make the bill contingent upon the approval of the voters at the next general election. (Not adopted)

LD 964 **An Act to Transfer Certain Tribal Holdings into a Trust** **ONTP**

<u>Sponsor(s)</u> MOORE		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 964 would have allowed lands in Albany Township that are contiguous to the current Passamaquoddy Tribe's trust land to be included in Passamaquoddy Indian Territory. The bill also proposed to extend the deadline for the United States Secretary of the Interior to acquire lands to be included as trust lands for the Passamaquoddy Tribe.

LD 1050 **An Act to Revise the Prelitigation Malpractice Screening Panel Procedures, Criteria and Composition** **INDEF PP**

<u>Sponsor(s)</u> SAVAGE		<u>Committee Report</u> ONTP MAJ OTP-AM MIN		<u>Amendments Adopted</u>
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LD 1050 proposed to amend the procedures for mandatory prelitigation screening and mediation panels by changing the composition of the panel, changing the standard for the panel's decision to whether there are genuine issues of material fact, and prohibiting the use of panels in cases not involving a health care practitioner.

Committee Amendment "A" (H-1077) (Minority Report) proposed to replace the bill. It proposed to prohibit a health care practitioner who is insured by the same professional liability insurance company as the person accused of professional negligence from serving on the prelitigation screening panel. The amendment proposed that, unless the plaintiff has requested that a time period be extended, the hearing may be bypassed completely if it has not been held within 4 months. It proposed to shorten certain time periods and allow experts to submit written statements rather than testify in person. It proposed to allow the panel chair to require the parties to make their presentations of the case in writing. It proposed to change the standard of proof used by the panel to whether the evidence presented to the panel and the permissible inferences from the evidence raise issues of fact as to negligence and causation. It proposed to allow the use of testimony made under oath in the panel proceedings to be used in subsequent proceedings for the purpose of impeachment. (Not adopted)

LD 1057 **An Act to Amend the Laws Regarding Wrongful Death and Recoveries for Wrongful Death** **ONTP**

<u>Sponsor(s)</u> MILLS		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1057 proposed to rewrite the provision of law governing actions for wrongful death to make the law more understandable.