

# MAINE STATE LEGISLATURE

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1  
Date: 3/21/06  
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(Filing No. H- 863)

3 **Criminal Justice and Public Safety**

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5 **STATE OF MAINE**  
6 **HOUSE OF REPRESENTATIVES**  
7 **122ND LEGISLATURE**  
8 **SECOND REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to H.P. 1429, L.D. 2031, Bill, "An Act To  
10 Authorize Certain County Jail Employees To Perform Ministerial Functions Related to  
11 Preparing Personal Recognizance or Unsecured Appearance Bond "

12 Amend the bill by striking out the title and substituting the following:

13 **'An Act To Authorize Certain County Jail Employees To Perform Certain**  
14 **Ministerial and Notary Functions for Inmates'**

15 Further amend the bill by striking out all of the emergency preamble and inserting in  
16 its place the following:

17 **'Emergency preamble. Whereas,** acts of the Legislature do not become effective  
18 until 90 days after adjournment unless enacted as emergencies; and

19 **Whereas,** authorizing certain county jail employees to perform ministerial functions  
20 related to preparing personal recognizance or an unsecured appearance bond and  
21 providing notary services has been the practice of several jails and has been of benefit to  
22 both the jails and their inmates; and

23 **Whereas,** the provision of these ministerial functions and notary services has  
24 unintentionally been in violation of the Maine Revised Statutes, Title 30-A, section 353;  
25 and

26 **Whereas,** enacting a permissible process for these ministerial functions and notary  
27 services will continue to benefit the jails and the inmates; and

28 **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
29 the meaning of the Constitution of Maine and require the following legislation as  
30 immediately necessary for the preservation of the public peace, health and safety; now,  
31 therefore,'

32 Further amend the bill by inserting after section 1 the following:

33 **'Sec. 2. 30-A MRSA §353,** as amended by PL 1989, c. 104, Pt. A, §8 and Pt. C,  
34 §§8 and 10, is further amended to read:

1 §353. Officer not to act as attorney or draw papers; employee of jailer not to act as  
2 judge or attorney

3 No An officer may not appear before any court as attorney or adviser of any party in  
4 an action or draw any writ, complaint, declaration, citation, process or plea for any other  
5 person; all such acts are void. No A person employed by the keeper of a jail in any  
6 capacity may not exercise any power or duty of a judicial officer ~~or notary public~~ or act  
7 as attorney for any person confined in the jail; all such acts are void. Beginning April 15,  
8 2006, if commissioned as a notary public and authorized to do so by the sheriff, an  
9 employee of a jail, other than a part-time or full-time corrections officer or a deputy  
10 sheriff, may, without fee, exercise any power or duty of a notary public for any person  
11 confined in the jail.

12 **Sec. 3. Retroactivity.** That section of this Act that amends the Maine Revised  
13 Statutes, Title 30-A, section 353 applies retroactively to February 28, 1989.'

14 **SUMMARY**

15 Beginning April 15, 2006, this amendment authorizes county jail employees, other  
16 than corrections officers or deputy sheriffs, who have a commission as a notary public to  
17 provide notary public services for inmates if authorized to do so by the sheriff. Inmates  
18 frequently require access to notary public services and unless county jail employees are  
19 allowed to perform them, there is no practical way for inmates to obtain such access. On  
20 February 28, 1989, "judicial officer or notary public" was substituted for "magistrate" in  
21 this provision, apparently in the mistaken belief that a notary public performed judicial  
22 functions. However, as of 1988, this was no longer true and a notary public was  
23 restricted to performing only ministerial functions. Therefore, there is no legal  
24 impediment to or conflict of interest for a jail employee to also act as a notary public for  
25 inmates.

26 This amendment also changes the emergency preamble and adds a retroactivity  
27 clause. Due to ignorance of the law on the part of inmates and employees alike, since  
28 1989 numerous county jail inmates have requested and been afforded notary public  
29 services from county jail employees, including notarizing documents such as affidavits,  
30 wills, living wills and powers of attorney and performing marriage ceremonies. Making  
31 this change retroactive validates the authority of a jail employee who provided notary  
32 services for an inmate at any time since 1989 to act as a notary.

FISCAL NOTE REQUIRED  
(See attached)



Approved: 03/16/06 *MAC*

# 122nd MAINE LEGISLATURE

LD 2031

LR 3178(02)

**An Act To Authorize Certain County Jail Employees To Perform Ministerial Functions Related to Preparing Personal Recognizance or Unsecured Appearance Bond**

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

**Committee: Criminal Justice and Public Safety**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund