

MAINE STATE LEGISLATURE

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**STATE OF MAINE
115TH LEGISLATURE**

**FIRST REGULAR SESSION
AND
FIRST SPECIAL SESSION**

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
JUDICIARY**

AUGUST 1991

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**ONE HUNDRED AND FIFTEENTH LEGISLATURE
FIRST REGULAR SESSION
AND
FIRST SPECIAL SESSION
JOINT STANDING COMMITTEE
BILL SUMMARIES
AUGUST 1991**

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees and Joint Select Committees of the Maine Legislature. The volume is organized alphabetically by committee; within each committee, the summaries are arranged by LD number. A subject index is provided at the beginning of each committee's summaries.

All adopted amendments are listed, by paper number (e.g., H - 584 or S - 222), together with the sponsor for floor amendments. Final action on each bill is listed to the right of the title. Various types of final action are abbreviated as follows:

PUBLIC XXX	<i>Chapter # of enacted Public Law</i>
P&S XXX	<i>Chapter # of enacted Private & Special Law</i>
RESOLVE XXX	<i>Chapter # of enacted Resolve</i>
CON RES XXX	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
EMERGENCY	<i>Enacted law takes effect sooner than 90 days</i>
CARRIED OVER	<i>Bill carried over to 2nd Session</i>
FAILED EMERGENCY ENACTMENT	<i>Bill failed to get 2/3 vote</i>
ONTP	<i>Ought Not to Pass report accepted</i>
LVWD	<i>Leave to Withdraw report accepted</i>
INDEF PP	<i>Bill Indefinitely Postponed</i>
DIED BETWEEN BODIES	<i>House & Senate disagree; bill died</i>
VETO SUSTAINED	<i>Legislature failed to override Governor's Veto</i>
UNSIGNED	<i>Not signed by Governor within 10 days</i>
DIED ON ADJOURNMENT	<i>Action incomplete when 1st session ended</i>

These summaries were prepared by the analyst or analysts assigned to the committee. But, this document was produced by the efforts of all the office staff, including secretaries: Charlene Raymond and Valarie Parlin, and especially Laurette Knox who coordinated preparation of the overall document.

If you have any suggestions or comments on these summaries, please let us know.

LD 1363

An Act to Eliminate the Need for Notice of Claim When the Government Is Aware of a Claimant's Inquiries

ONTP

SPONSOR(S)
ANTHONY
LAWRENCE
CONLEY
MCCORMICK

COMMITTEE REPORT
ONTP

AMENDMENTS ADOPTED

SUMMARY

The bill eliminates the need for formal notice under the Maine Tort Claims Act to the governmental entity when the governmental entity and its insurance carrier are aware of the claimants injuries and have been dealing with the claimant with respect to injuries despite the absence of a formal notice of claim under this bill. See LD 1461.

LD 1365

An Act to Provide Good Cause Basis for Extending the Notice of Claim Period

PUBLIC 505

SPONSOR(S)
ANTHONY
GAUVREAU
OTT
KETTERER

COMMITTEE REPORT
OTP-AM MAJ
OTP-AM MIN

AMENDMENTS ADOPTED
H-587 MIN REP

SUMMARY

The bill amends current law regarding the filing of a notice of claim and service of the filing on the person accused of professional negligence. The bill requires that a copy of a notice of claim be filed with, rather than served on, the clerk of the Superior Court. It removes language requiring that the notice of claim and other relevant documents be kept confidential. It also permits certain extensions of time upon a showing of good cause, rather than extraordinary cause. Finally, the bill permits service under the Maine Rules of Civil Procedure, Rule 4 of a copy of the notice of claim on the person accused.

Committee Amendment "A" (H-586) (Majority report) replaces the bill. The amendment revises the procedure for commencing a medical malpractice action to more closely resemble the commencement of any other civil action as provided by the Maine Rules of Civil Procedure, Rule 3. It retains the confidentiality of the notice of claim and all other documents filed with the court. The \$200 filing fee per notice of claim is also retained. The amendment requires only good cause, rather than extraordinary cause, to exist for the prelitigation panel chair to allow the screening process to continue for over a year. The amendment eliminates the confusion in the current law between filing a notice of claim with the court and serving a notice of claim on the person accused of professional negligence. 24 MRSA §2903, sub-§1, ¶A is amended to reference the procedures for commencing an action as provided in 24 MRSA §2853. The amendment permits the introduction of practice parameters and risk management protocols into evidence by the plaintiff, the physician or the physician's employer in a claim for professional negligence before a prelitigation screening panel or the court. The amendment also permits consideration of those parameters and protocols by a prelitigation screening panel as an affirmative defense. (Not adopted)

Committee Amendment "B" (H-587) (Minority report) retains section 2 of the bill, but replaces the rest. (Section 2 requires only good cause, rather than extraordinary cause, to exist for the prelitigation panel chair to allow the screening process to continue for over a year.) The amendment revises the procedure for commencing a medical malpractice action to more closely resemble the commencement of any other civil action as provided by the Maine Rules of Civil Procedure, Rule 3. It retains the confidentiality of the notice of claim and all other documents filed with the court. The \$200 filing fee per notice of claim is also retained. The amendment eliminates the confusion in the current law between filing a notice of claim with the court and serving a notice of claim on the person accused of

professional negligence. 24 MRS §2903, sub-§1, ¶A is amended to reference the procedures for commencing an action as provided 24 MRS §2853. The amendment gives the prelitigation screening panels the authority to hear and rule on the affirmative defense that the defendant, as a physician participating in the medical liability demonstration project, complied with the applicable practice parameters and risk management protocols. This makes the prelitigation screening panel process consistent with the litigation of professional negligence actions under the medical liability demonstration project.

LD 1366 An Act to Amend the Uniform Rights of the Terminally Ill Act

PUBLIC 441

SPONSOR(S)	COMMITTEE REPORT	AMENDMENTS ADOPTED
PFEIFFER MARSANO CLARK N CLARK M	OTP-AM	H-566

SUMMARY

The bill amends the Uniform Rights of the Terminally Ill Act to make express provision for persons in a persistent vegetative state.

Committee Amendment "A" (H-566) replaces the bill. It changes the laws regarding living wills to more accurately reflect the expectations of persons signing living wills. A definition of "persistent vegetative state" is added, and the entire Act applies to persistent vegetative state as well as terminal condition. The definition of "life-sustaining treatment" is simplified by including artificially administered hydration and nutrition as a form of life-sustaining treatment. Any person who wants to continue receiving hydration and nutrition but wants other forms of life-sustaining treatment withheld or withdrawn can make those wishes known in the living will. The sample forms are amended to reflect these changes, to include definitions of important terms and to encourage persons with questions to seek the advice of a doctor or lawyer.

LD 1368 An Act to Extend Confidential Status to Medical Data Assembled by Certain Health Care Providers

ONTP

SPONSOR(S)	COMMITTEE REPORT	AMENDMENTS ADOPTED
MELENDY GAUVREAU GILL MITCHELL E	ONTP	

SUMMARY

The bill would have included as confidential and exempt from discovery all peer review records and proceedings of home health agencies, community mental health centers and rural health centers.

LD 1390 An Act to Allow for Criminal and Civil Prosecution for Animal Trespass Laws

LV/WD

SPONSOR(S)	COMMITTEE REPORT	AMENDMENTS ADOPTED
TARDY	LV/WD	

SUMMARY

The bill would have created the crime of animal trespass so an attorney for the State may choose between civil and criminal sanctions.