

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 scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
115TH LEGISLATURE

SECOND REGULAR SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
JUDICIARY

MAY 1992

Staff:

*Margaret J. Reinsch, Legislative Analyst
Deborah C. Friedman, Legislative Analyst
Julie S. Jones, Principal Analyst*

*Office of Policy and Legal Analysis
Room 101, State House Station 13
Augusta, ME 04333
(207)287-1670*

MEMBERS:

**Sen. N. Paul Gauvreau
Sen. Georgette B. Berube
Sen. Muriel D. Holloway*

**Rep. Patrick E. Paradis
Rep. Constance D. Cote
Rep. Patricia M. Stevens
Rep. Cushman D. Anthony
Rep. Susan Farnsworth
Rep. Mary R. Cathcart
Rep. Andrew Ketterer
Rep. Dana C. Hanley
Rep. John H. Richards
Rep. David N. Ott*

**Denotes Chair*

IARTHA E. FREEMAN, DIRECTOR
WILLIAM T. GLIDDEN, JR., PRINCIPAL ANALYST
ULIE S. JONES, PRINCIPAL ANALYST
DAVID C. ELLIOTT, PRINCIPAL ANALYST
DON CLARK
YAN M. DYTTER
BRO FLATEBO
EBORAH C. FRIEDMAN
MICHAEL D. HIGGINS
KANE ORBETON



KAREN L. HRUBY
JILL IPPOLITI
JOHN B. KNOX
PATRICK NORTON
MARGARET J. REINSCH
PAUL J. SAUCIER
HAVEN WHITESIDE
MILA M. DWELLEY, RES. ASST.
ROY W. LENARDSON, RES. ASST.
BRET A. PRESTON, RES. ASST.

STATE OF MAINE
OFFICE OF POLICY AND LEGAL ANALYSIS
ROOM 101/107/135
STATE HOUSE STATION 13
AUGUSTA, MAINE 04333
TEL.: (207) 289-1670

**ONE HUNDRED AND FIFTEENTH LEGISLATURE
SECOND REGULAR SESSION**

**JOINT STANDING COMMITTEE
BILL SUMMARIES**

MAY 1992

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 far right of the title. Various types of final action are abbreviated as follows:

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

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, especially Laurette Knox who coordinated preparation of the overall document.

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

1. The Chief Justice of the Superior Court was authorized to issue administrative orders regarding discovery at the prelitigation screening panel phase of a medical malpractice claim to allow for consistent discovery limitations that apply to all parties in all cases. The amendment also allowed discovery requests to go directly to the Superior Court rather than first requiring a refusal to rule on the request by the panel chair.
2. The amendment authorized the screening panel chair presiding over a medical malpractice case to refer the parties to mediation prior to the hearing of the case before the whole panel. The persons to whom the case could be referred for mediation are other panel chairs. The parties and the panel chair handling the mediation would report back to the presiding panel chair regarding the results of the mediation. The purposes of this change were to reduce the issues in dispute between the parties, increase the number of settlements early in the process and provide an opportunity for smaller claims to be presented. The amendment also allowed for mediation at any time.
3. The amendment also allowed the various interest groups and parties interested in medical malpractice claim resolution to review panel operations, collect information and report back to the Joint Standing Committee on Judiciary by February 1, 1993.

The amendment did not repeal the entire subchapter on the prelitigation screening panels.
 [adopted in the Senate only]

LD 1654

An Act to Facilitate Criminal Enforcement of the Environmental Laws

DIED BETWEEN BODIES

SPONSOR(S)	COMMITTEE REPORT	AMENDMENTS ADOPTED
TREAT	OTP-AM A	
JACQUES	OTP-AM B	
GAUVREAU	ONTP C	
MARSH		

SUMMARY

The bill was intended to clarify the existing criminal provisions of the environmental laws and to facilitate the enforcement of those provisions by the State.

1. The bill incorporated all the criminal provisions currently existing in the Maine Revised Statutes, Title 38, including those provisions relating to hazardous waste.
2. The bill amended Title 38, section 349, subsection 1 by expressly stating the culpable mental states of "intentionally," "knowingly" and "recklessly." Title 38, section 349, subsection 1 is currently silent as to the level of culpable mental state required for a conviction of a criminal violation under the environmental laws.
3. The bill raised the class of crime for violations of environmental laws other than hazardous waste from a Class E crime to a Class C crime. The bill, however, specified the conduct subject to the higher degree of sanctions. The bill retained a general violation section for conduct that violates unspecified terms and conditions of the law and licenses, permits, approvals or decisions issued by the department. A violation of the general violation section was classified as a Class D crime.
4. With respect to the hazardous waste provisions, the bill simplified the statutes by using terms that are already defined in Title 38, rather than defining those terms within the criminal penalty section. In addition, the bill reduced the culpable mental state required for a conviction of a hazardous waste crime from "knowingly" to "recklessly." The purpose of the

change was to incorporate into state law federal concepts of imposing liability on those persons who engage in "willful blindness" or a "conscious avoidance" of hazardous waste violations. The reckless standard removes any incentive to avoid becoming familiar with the legal requirements for handling hazardous waste.

5. The bill also amended the definition of "environmental clean-up expense" and resolved a numbering conflict.

Committee Amendment "A" (H-945) – Majority Report: The amendment made the following changes to the bill.

1. The amendment deleted the culpable mental state of recklessness as proposed by the bill for all criminal violations of the environmental laws. The amendment retained the two highest culpable mental states of "intentional" and "knowing," of which at least one must be proved to establish commission of the enumerated environmental crimes. Each specified mental state would apply to each element of the crime.
2. The amendment required that if the crime to be proved is the discharge, emission or handling of pollutants, contaminants, special waste or hazardous waste in violation of any order, license, permit, approval or decision of the Department of Environmental Protection, that discharge, emission or handling must be in violation of a significant term or condition of that authorization. "Significant" or "significantly" was defined to mean that a violation of a significant term or condition is capable of affecting the discharge of pollutants, emission of air contaminants or the handling of special waste or hazardous waste.
3. The amendment changed the criminal action involving solid waste from the term "handles" to the more specific term "disposes of."
4. The amendment added a reference including as a criminal offense the handling of special waste in violation of Title 38, department rules or any significant term or condition of any order, license, permit, approval or decision of the department.
5. The amendment retained the Class D classification for the hazardous waste violation of giving or handing over hazardous waste to a 3rd person who is not licensed.
6. The amendment provided for a possible maximum fine of \$25,000 for a Class D offense, an increase from the \$10,000 maximum proposed by the original bill.
7. The amendment changed the "catch-all" environmental crime provision, encompassing all environmental violations not specifically enumerated, to a Class E crime with a fine of up to \$25,000.
8. The amendment revised the language on falsification of environmental records. The amendment limited the culpable mental state to "intentional" or "knowing" by deleting "reckless" from the original bill. The false statements must be material false statements to be criminal violations, which the amendment classified as Class C crimes. "Material" was defined to mean capable of affecting the course and outcome of any licensing proceeding or capable of affecting the department's ability to monitor compliance. The amendment classified failure to monitor, sample, report or make information submittals as required a Class C crime if there was intent to deceive the department; otherwise, the offense was a Class E crime.
9. The amendment changed the culpable mental state for tampering with a monitoring device from "reckless," as proposed in the original bill, to "intentional" or "knowing."

10. The amendment repealed Title 38, section 1319-T, which separately set out criminal activity with regard to hazardous waste.

[not adopted].

The bill was recommitted to Committee, and the Committee reported out three committee reports: Two new Committee Amendments ("B" and "C") and Ought Not To Pass.

Committee Amendment "B" (H-1306) - Majority Report: The amendment made the following changes to original bill.

1. The amendment revised the current Class E penalty to require that the State prove that the individual acted either "intentionally" or "knowingly."
2. The amendment raised the class of only selected categories of environmental crimes. It made no changes to the current definition and classification of hazardous waste crimes.
3. The amendment raised the classification for specific intentional and knowing violations of the air pollution, water pollution, biomedical waste and special waste laws from Class E to Class C. The air pollution violations were limited to emissions from stationary sources for commercial purposes, while the water pollution violations were limited to direct or point source discharges for commercial purposes. The amendment elevated violations of only "significant" terms or conditions of orders, rules, licenses, permit, approvals or decisions to Class C status. The State must prove that the intentional or knowing violation of the license affected the discharge of pollutants, emission of air contaminants or the handling of special waste or biomedical waste.
4. The amendment limited prosecutorial discretion in several ways. First, it extended to members of the Department of Environmental Protection the ethical rule prohibiting lawyers from threatening criminal prosecution solely to gain advantage in a civil matter. Second, it limited prosecution of the Class C crimes under Title 38, section 349 to the Attorney General, eliminating the possibility that district attorneys could initiate such actions. Third, it created an affirmative defense similar to the unavoidable malfunction provision that currently applies to civil penalty actions.
5. The amendment further revised the language on falsification of environmental records. The amendment limited the culpable mental state to intentional or knowing conduct, thus deleting the "reckless" level of intent in the original bill. The amendment classified the falsification of environmental records as a felony only if the false statements are "material." The amendment defined "material" as "capable of affecting the course and outcome of any licensing proceeding or capable of affecting the department's ability to monitor compliance." The amendment made failure to provide information as required by the Department of Environmental Protection a Class C crime only if there is an intent to deceive the department; otherwise, it would be a Class E crime.

[adopted in the Senate only]

Committee Amendment "C" (H-1307) - Minority Report: The amendment made the following changes to the original bill.

1. The amendment deleted the culpable mental state of recklessness as proposed by the bill for all criminal violations of the environmental laws. The amendment retained the two highest culpable mental states of "intentional" and "knowing," of which at least one must be proved to establish commission of the enumerated environmental crimes.
2. The amendment required that if the crime to be proved is the discharge of hazardous waste or hazardous matter in violation of any order, license, permit, approval or decision of the Department of Environmental Protection, that discharge must be in violation of a significant term

or condition of that authorization. The amendment defined "significant" to mean that a violation of a significant term or condition is capable of affecting the discharge of hazardous waste or hazardous matter.

3. The amendment made the following a Class C crime: transporting any hazardous substance or special waste without having a required license or permit, transporting any hazardous substance or special waste to a location that does not, in fact, have a required license or permit for handling that waste, and accepting such waste for disposal or storage without a required license or permit.
4. The amendment retained the Class D classification for the hazardous waste violation of giving or handing over hazardous waste to a 3rd person who is not licensed.
5. The amendment provided for a possible maximum fine of \$25,000 for a Class D offense, an increase from the \$10,000 maximum proposed by the original bill.
6. The amendment changed the "catch-all" environmental crime provision, encompassing all environmental violations not specifically enumerated, to a Class E crime with a fine of up to \$25,000.
7. The amendment revised the language on falsification of environmental records. The amendment limited the culpable mental state to "intentionally" or "knowingly" by deleting "recklessly" from the original bill. The false statements must be material false statements to be criminal violations, which the amendment classified as Class C crimes. The amendment defined "material" to mean "capable of affecting the course or outcome of any licensing or other procedure or capable of affecting the department's ability to monitor compliance." The amendment made failure to monitor, sample, report or make information submittals as required is a Class C crime if there is intent to deceive the department.
8. The amendment changed the culpable mental state for tampering with a monitoring device from "reckless," as proposed in the original bill, to "intentional" or "knowing."
9. The amendment repealed Title 38, section 1319-T, which separately sets out criminal activity with regard to hazardous waste.

[not adopted]

See LD 2461.

LD 1713 An Act to Safeguard Money Held for Minors

PUBLIC 641

SPONSOR(S)

MITCHELL E
GAUVREAU
STEVENS P

COMMITTEE REPORT

OTP-AM

AMENDMENTS ADOPTED

H-876
H-894 PARADIS P

SUMMARY

The bill amended the Probate Code to provide that a court may order funds or property to be held for the minor's benefit past the minor's attainment of majority and through age 25 when necessary and in the best interest of the minor.

Committee Amendment "A" (H-876): The amendment retains the requirements in the original bill that the custodian, guardian or other person holding money or other property on behalf of a minor must account to the court and the minor prior to distribution. The amendment eliminates from the bill the authority of the court to order the money or other property held beyond the minor's reaching majority. Under the