

MAINE STATE LEGISLATURE

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**STATE OF MAINE
117TH LEGISLATURE**

SECOND REGULAR SESSION

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
JUDICIARY**

JUNE 1996

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ONE HUNDRED SEVENTEENTH LEGISLATURE
SECOND REGULAR SESSION

Summary Of Legislation Before The Joint Standing Committees
June 1996

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. 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 alphabetically 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.

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:

<i>CARRIED OVER</i>	<i>Bill carried over to Second Session</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; bill died</i>
<i>DIED BETWEEN BODIES</i>	<i>House & Senate disagree; bill died</i>
<i>DIED ON ADJOURNMENT</i>	<i>Action incomplete when session ended; bill died</i>
<i>EMERGENCY</i>	<i>Enacted law takes effect sooner than 90 days</i>
<i>FAILED EMERGENCY ENACTMENT</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT</i>	<i>Bill failed to get majority vote</i>
<i>FAILED MANDATE ENACTMENT</i>	<i>Bill imposing local mandate failed to get 2/3 vote</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed</i>
<i>ONTP</i>	<i>Ought Not To Pass report accepted</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>UNSIGNED</i>	<i>Not signed by Governor within 10 days</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's Veto</i>

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is July 4, 1996.

LD 526, a bill carried over from the First Regular Session, proposed to enact a discovery rule with respect to the statute of limitations for medical malpractice actions. Current law imposes a 3-year statute of limitations in medical malpractice actions with the 3-year period running from the date of the act or omission causing the harm or, in cases involving a foreign object left in the body, the 3 years runs from the date of discovery of the harm. The bill would have required the 3-year period to run from the date of discovery of the harm in all cases.

LD 636 **An Act to Modify Joint and Several Liability in Medical Malpractice Actions** ONTP

<u>Sponsor(s)</u> RUHLIN	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 636, a bill carried over from the First Regular Session, proposed to modify the principle of joint liability in medical malpractice cases. Under this bill, multiple defendants in these cases would have remained jointly liable for all damages awarded for economic loss and would have remained jointly liable for noneconomic loss unless a defendant were found to be less than 25% at fault as compared with other defendants. For such a defendant, the liability for non-economic damages would have been based on the degree of fault but that defendant would have remained jointly liable for all economic damages.

LD 658 **An Act Concerning Real Estate Trusts** PUBLIC 523

<u>Sponsor(s)</u> OTT	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-704
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LD 658, a bill carried over from the First Regular Session, proposed to provide that real estate trusts are not invalidated if a trustee is not named at the creation of the trust.

Committee Amendment "A" (H-704) proposed to replace the bill. It would have provided that deeds to or from a trust would not be invalidated for failure to name a trustee as grantor or grantee. It would not have changed the status of a trust into an entity capable of holding or conveying title in its own name; nor would it apply to trusts which already are such entities. The amendment would have provided for the preservation of claims of any person claiming the invalidity of such a deed delivered before the bill's effective date.

Enacted law summary

Public Law 1995, chapter 523 replaces the bill. It provides that deeds to or from a trust will not be invalidated for failure to name a trustee as grantor or grantee, but it does not change the status of a trust into an entity capable of holding or conveying title in its own name. It does not apply to trusts which already are such entities. The law also provides for the preservation of claims of any person claiming the invalidity of such a deed delivered before the law's effective date.

LD 742 **An Act Regarding Wrongful Death Actions** PUBLIC 577

<u>Sponsor(s)</u> LAFOUNTAIN	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-755
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LD 742, a bill carried over from the First Regular Session, proposed to amend the law regarding wrongful death actions by removing the existing cap of \$75,000 on the amount of damages that may be awarded to the family of the deceased to compensate for the loss of comfort, society and companionship of the deceased. The bill also proposed to extend the time limit for filing an action from 2 years to 6 years after the decedent's death.

Committee Amendment "A" (H-755) proposed to replace the original bill with a cap of \$150,000 on nonpecuniary damages for the family members to compensate for their loss. The amendment would not have changed the 2-year limitation period for filing an action that is in current law.

Enacted law summary

Public Law 1995, chapter 577 amends the law regarding wrongful death actions by increasing the cap to \$150,000 on the nonpecuniary damages that may be awarded to the family to compensate for the loss of comfort, society and companionship of the deceased.

LD 916 An Act to Improve the Function of the Maine Health Security Act

PUBLIC 571

Sponsor(s)
MILLS

Committee Report
OTP-AM

Amendments Adopted
S-462

LD 916, a bill carried over from the First Regular Session, proposed to change the law governing mandatory prelitigation screening and mediation panels. It would have provided that if a panel motion hearing has not concluded within 9 months of service of the notice of claim, the claimant may bypass panel proceedings and commence a lawsuit. It would have revised the specific findings required to be made by the panel at the conclusion of its deliberations and would have added the requirement that if the panel finds that there was negligence and causation, the panel would also have to decide whether the evidence was clear and convincing. The bill also proposed to amend the conditions under which the findings of the panel would be admissible in subsequent court actions.

Committee Amendment "A" (S-462) would have replaced the original bill. Under the current law requiring prelitigation screening and mediation panels for claims of professional negligence, a hearing on such a claim must be held no later than 120 days from the service of the notice of claim. This bill proposed to change the deadline to 6 months from the service of the notice of claim and proposed to clarify that this time period may be extended by the panel chair.

Enacted law summary

Public Law 1995, chapter 571 extends the time period in which a hearing must be held before a prelitigation screening and mediation panel for claims of medical malpractice. The time period is extended from 120 days to 6 months from the service of the notice of claim. This time period may be extended by the panel chair.