

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
117TH LEGISLATURE

FIRST REGULAR SESSION

BILL SUMMARIES  
JOINT STANDING COMMITTEE  
ON  
JUDICIARY

AUGUST 1995

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Sen. Joan M. Pendexter  
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**ONE HUNDRED AND SEVENTEENTH LEGISLATURE  
FIRST REGULAR SESSION**

**SUMMARY OF LEGISLATION BEFORE  
THE JOINT STANDING COMMITTEES**

**AUGUST 1995**

This document is a compilation of the bill summaries prepared by this office for the Joint Standing 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. The publication, History and Final Disposition of Legislative Documents, is helpful in determining to which committee any particular bill was referred.

In this document, the committee report or reports, the prime sponsor for each bill and the lead co-sponsor in each house if one has been designated are listed below each bill title. All adopted amendments are listed, by paper number, together with the sponsor for floor amendments. Final action on each bill is listed to the right of the title. Various categories of final action are abbreviated 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 &amp; 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&amp;S XXX</i>	<i>Chapter # of enacted Private &amp; Special Law</i>
<i>PUBLIC XXX</i>	<i>Chapter # of enacted Public Law</i>
<i>RESOLVE XXX</i>	<i>Chapter # of enacted 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>

These summaries were prepared by the analyst or analysts assigned to the committee. If more detailed information is needed on a bill, contact the committee analyst.

5581LHS

**LD 1164 An Act to Clarify Recent Amendments to the Laws on Guardianship and Conservatorship**

PUBLIC 203

**SPONSOR(S)**  
DONNELLY

**COMMITTEE REPORT**  
OTP

**AMENDMENTS ADOPTED**

**SUMMARY**

In the Second Regular Session of the 116th Legislature, amendments were made to the law on guardianship and conservatorship. This bill makes technical changes to the recent amendments which would correct errors and inconsistencies and address problems in implementation of the law.

First, the bill adopts uniform terminology with respect to the appointment of counsel for proposed wards and protected persons. Second, the bill specifically allows for cross-examination of the guardian ad litem. Third, the bill streamlines notice requirements in temporary guardianship and conservatorship cases, dispensing with the requirement of published notice on parties whose whereabouts is unknown and allowing the court to waive notice on interested parties where good cause is shown. Fourth, the bill clarifies the petitioner's burden of proof at the expedited hearing regarding the temporary guardian or conservator. Fifth, the bill clarifies the duration of a temporary guardianship or conservatorship, to run 6 months from date of the ex parte appointment. Finally, the bill makes it clear that a petition for temporary conservatorship can be heard on interchange in cases in which the judge in a particular county is unavailable.

**LD 1168 An Act to Implement the Recommendations of the People with Disabilities Access Commission**

PUBLIC 393

**SPONSOR(S)**

**COMMITTEE REPORT**  
OTP-AM

**AMENDMENTS ADOPTED**  
H-604

**SUMMARY**

This bill contains the statutory recommendations of the People with Disabilities Access Commission, established by Resolve 1993, chapter 73. The commission's report was submitted to the Joint Standing Committee on Judiciary on January 31, 1995.

The intent of this bill as amended is to harmonize the provisions of the federal Americans with Disabilities Act with those of the preexisting Maine Human Rights Act by adopting whichever provisions of either law provide more access for people with disabilities without otherwise creating or imposing new standards. The exception is in the case of elevators in which the Americans with Disabilities Act version, adopted in the Committee Amendment, provides less access because it does not require elevators for buildings under 3 stories while current Maine law does.

COMMITTEE AMENDMENT "A" (H-604) makes the following changes to the bill.

1. It deletes the separate definition of "disability-related discrimination" in section 2 of the bill because it is inaccurate. It amends the definition of "employee" to include individuals employed by their families for the purpose of disability-related discrimination.
2. It corrects format to make clear that "qualified individual with a disability" applies to public accommodations with regard to public entities only and to employment in all situations.
3. It adds a section on construction of the Maine Human Rights Act. It allows insurance practices with the Maine Insurance Code and the federal Employee Retirement Income Security Act.
4. It provides that the Maine Human Rights Act does not apply to the issuance, denial, suspension, revocation or restriction of driver's licenses by the Secretary of State until April 1, 1996.

5. It clarifies that the Maine Human Rights Commission must adopt rules to include the federal standards for the "fundamental-alteration" defense, thus making that defense to a claim of discrimination available to municipal, county and state governments.
6. It provides that an employer may raise as a defense to accusations of discrimination that qualification standards, tests or selection criteria were job-related and consistent with business necessity and that a reasonable accommodation would not be sufficient.
7. It clarifies that a covered entity may not subject an individual or a class, on the basis of disability, to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of the entity.
8. It clarifies that specific alterations, not repairs, must meet certain construction and accessibility standards.
9. It changes the requirement for vertical access in current law. An elevator is not required under this amendment if the facility is under 3 stories or has less than 3,000 square feet on each story. Elevators are required under this amendment for 2-story shopping centers, shopping malls, professional offices of health care providers or facilities covered by Title II of the Americans with Disabilities Act. In addition, the United States Attorney General may require elevators for particular categories of facilities that are under 3 stories based on the usage of the facility.
10. It expands mandatory plan review to cover all public buildings. Anyone constructing a new public building must first have the plans approved by the State Fire Marshal's office. The fees collected for the reviews will pay for 4 additional Fire Protection Specialist Assistants and general operating costs. "Public buildings" are buildings or structures constructed, operated or maintained for use by the general public.
11. It deletes language relating to the preemption of municipal and other local government standards.
12. It clarifies that the State Fire Marshal's office shall adopt fees for waivers and variances as well as reviews.
13. It extends the People with Disabilities Access Commission to January 15, 1996, adds 2 new members to bring the total membership to 19 and adds 2 additional duties to the commission's charge. The 2 new members represent municipalities and the Secretary of State. The expanded duties are to study drivers' licensing and the use of elevators in buildings of fewer than 3 stories.

**LD 1170 An Act to Expand Access to Medical Care by Encouraging Involvement of Retired Physicians, Podiatrists and Dentists**

PUBLIC 385

<b>SPONSOR(S)</b>	<b>COMMITTEE REPORT</b>	<b>AMENDMENTS ADOPTED</b>
PLOWMAN	ONTP MAJ OTP-AM MIN	H-319 H-493 SAXL J

**SUMMARY**

This bill provides expanded immunity from liability for physicians, podiatrists and dentists who are retired from active practice and who volunteer their services within the scope of their license to a nonprofit organization or an agency of the State. It also makes technical corrections to reflect the intent of current law.