

# 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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*Sen. Sean F. Faircloth*

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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 &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 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.

LLP status. The amendment proposed provisions governing filing liability of professional LLPs and authorized use of names and initials.

The amendment would have added an appropriation and a fiscal note to the bill.

**Senate Amendment "A" To Committee Amendment "A" (S-575)** proposed to delete references to a deleted requirement that a limited liability partnership submit a list of all the partners upon the request of the Secretary of State.

***Enacted law summary***

Public Law 1995, chapter 633 allows general partnerships to elect limited liability status. The LLP election allows a general partnership to preserve its traditional structure and any preexisting agreements between the partners, while offering the partners some protection from vicarious liability for claims arising from the conduct of the partnership's business.

If a partnership fails to comply with certain filing requirements, it is the status of the partnership as an LLP, with all the associated protections from liability, that is revoked and not the partnership's ability to conduct business in this State. The partnership is also free to rescind its status as an LLP at any time.

The internal governance of the LLP is subject to the State's general partnership law and any partnership agreement between the parties.

Chapter 633 allows general partnerships formed for any legal purpose, whether by professionals or nonprofessionals, to make the LLP election. Under Maine law, professionals forming corporations are subject to the Maine Professional Service Corporation Act (PSCA). This chapter incorporates the liability provisions of PSCA that apply to professionals.

This chapter provides that a general partnership electing LLP status must indicate that status by using in its name either "Limited Liability Partnership," "L.L.P." or "LLP." This chapter revises the limited partnership law to allow the use of the abbreviation "L.P." or the designation of "LP" and revises the limited liability company law to allow the use of the abbreviation "L.L.C." or the designation "LLC."

This chapter establishes how certain filings of the LLP are to be executed. When an LLP fails to deliver its annual report or maintain a registered agent and office or otherwise fails to comply with the law, the Secretary of State may revoke its status as a limited liability partnership. Because LLP status is an election of a general partnership, revocation of that status causes only the loss of the protection from liability, not a suspension from conducting business as a partnership.

This chapter requires that the contact partner be disclosed in the initial certificate of limited liability partnership and that it be kept current. In addition, the names and addresses of all the partners must be included in the annual report.

**LD 1371**

**An Act Relating to Civil Actions, Providing for the Defense of Assumption of Risk, Providing for Standards of Liability in Product Liability Actions and Providing for Standards and Procedures in Awarding Punitive Damages**

ONTP

Sponsor(s)  
CIANCHETTE

Committee Report  
ONTP

Amendments Adopted

LD 1371, a bill carried over from the First Regular Session, proposed several changes to the laws relating to civil actions seeking damages. The bill would have established assumption of risk as an independent defense. Under current law, assumption of risk is relevant only as a factor to be considered in the comparative negligence determination.

The bill also proposed that a product manufacturer or seller could not be held liable for damage caused by an aspect of the product that was an inherent characteristic of that type of product and that was known to the ordinary consumer. LD 1371 also proposed that a plaintiff claiming that a product was defectively designed would have to establish that a safer alternative design existed that would have avoided the harm, a modification of Maine's existing "danger-utility" test for product defects, under which the existence of a feasible alternative design is one of three relevant factors.

LD 1371 also would have established a number of procedural and substantive rules relating to the award of punitive damages in civil cases. The bill would have barred plaintiffs from demanding a specific amount of punitive damages in the complaint, permitted bifurcation of civil trials into liability and punitive damages phases, established factors for consideration in determining the appropriate level of punitive damages, applied existing comparative negligence principles to punitive damages awards, codified the requirement that the plaintiff prove by clear and convincing evidence that the defendant acted with malice in order to sustain a punitive damages award, limited the amount of punitive damages to 2 times the amount of compensatory damages or \$350,000, restricted the availability of multiple punitive damages awards for the same conduct and limited the availability of punitive damages for conduct regulated by the government.

<b>LD 1445</b>	<b>An Act to Limit the Liability of Property Owners in Cases of Nonnegligent Lead Poisoning</b>	<b>PUBLIC 572 EMERGENCY</b>
<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BERUBE	OTP-AM	S-463

LD 1445, a bill carried over from the First Regular Session, proposed to limit the liability of landlords for lead poisoning to \$250,000 unless the landlord had actual notice of conditions likely to cause lead poisoning and refused to take corrective action.

**Committee Amendment "A" (S-463)** proposed to replace the original bill. The amendment would have added an emergency preamble, lowered the current cap on lead-poisoning liability from \$750,000 to \$600,000 and changed the repeal date for the cap from April 15, 1996 to October 1, 1999. The amendment also proposed to create a task force to study issues related to the availability of insurance for property owners, the effectiveness of the cap in protecting both property owners and the families of lead-poisoned children and mechanisms to financially assist property owners in lead abatement. The proposed task force would have to report to the legislative committees having jurisdiction over judiciary and human resources matters by November 1, 1998. The amendment also included a fiscal note.

***Enacted law summary***

Public Law 1995, chapter 572, enacted as an emergency, lowers the cap on lead-poisoning liability from \$750,000 to \$600,000 and changes the repeal date for the cap from April 15, 1996 to October 1, 1999. It also creates a task force to study issues related to the availability of insurance for property owners, the effectiveness of the cap in protecting both property owners and the families of lead-poisoned children and mechanisms to financially assist property owners in