

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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Margaret J. Reinsch, Principal Analyst

Lisa Copenhaver, Legislative Analyst

Office of Policy and Legal Analysis

Room 101/107/135, 13 State House Station

Augusta, ME 04333

(207)287-1670



**Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS**

13 State House Station, Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

**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.

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-730

LD 1707 was submitted by the Commission to Study the Trespass Laws, created by Resolve 1995, chapter 53. It proposed a number of changes to the landowner liability laws, which limit the duty of care owed by landowners to persons who use their property for recreational or harvesting activities. The bill would have added dog sledding and equine activities to the list of activities that are specifically included in the definition of "recreational or harvesting activities." The bill also would have clarified that the limitation on the duty of care applies to landowners regardless of whether they have granted permission to use their property to another person.

Committee Amendment "A" (H-730) proposed to add the to the list of activities specifically included in the definition "recreational and harvesting activities" environmental education and research, volunteer maintenance and improvement of premises and the harvesting of marine and field products, such as herbs, berries and wild edibles. The amendment also proposed a clarification that "recreational and harvesting activities" does not include commercial agricultural or timber harvesting and proposed adding "easement holders" to the list of persons protected by the law.

Enacted law summary

Public Law 1995, chapter 566 made a number of changes to the landowner liability laws, which limit the duty of care owed by landowners to persons who use their property for recreational or harvesting activities. It adds the following to the list of activities that are specifically included in the definition of "recreational or harvesting activities:" Dog sledding, equine activities, environmental education and research, volunteer maintenance and improvement of premises and the harvesting of marine and field products, such as herbs, berries and wild edibles. It clarifies that "recreational and harvesting activities" does not include commercial agricultural or timber harvesting. Chapter 566 also clarifies that the limitation on the duty of care applies to landowners, regardless of whether they have granted permission to use their property to another person and that the law includes all landowners, lessees, managers, easement holders and occupants.

LD 1708 An Act to Amend the Laws Relating to Recovery for Property Damage

PUBLIC 585

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-753

LD 1708 was submitted by the Commission to Study the Trespass Laws, created by Resolve 1995, chapter 53. LD 1708 would have allowed landowners to recover treble damages for property damaged by a trespasser on posted or unposted land and would have also provided for recovery of costs and reasonable attorney's fees.

LD 1708 also proposed to amend the law allowing for recovery of enhanced damages from a person who destroys or damages trees, agricultural products or survey markers. In addition to recovering double damages for negligent damage and treble damages for intentional damage as allowed under current law, the owner would have been entitled to recover the reasonable costs of professional services, including attorney's fees. This bill would have extended the law to permit enhanced recovery by the owner for damage to any road, drainage ditch, culvert or bridge or for disposal of litter, and outlines how such damage would be measured. The bill also proposed a

minimum damage award of \$250 for negligent damage and \$500 for intentional damage. LD 1708 also would have permitted an owner to recover any costs the owner incurs if the damage results in a violation of any other ordinance or law and, as a result, the owner becomes involved in an enforcement proceeding. These costs would have included legal fees and the value of the owner's time spent on involvement in the enforcement proceeding.

Committee Amendment "A" (H-753) proposed to replace the original bill and restructure the proposal and current law so that damage to forest products, agricultural products and survey markers would be addressed in a different section than other types of damage to property.

In cases in which agricultural products, forest products or survey markers are damaged, the amendment proposed the same provisions as in the original bill: a minimum damage award of \$250 for negligent damage and \$500 for intentional damage and the recovery of costs associated with an enforcement proceeding if the damage results in a violation of any federal, state or local law or ordinance. The amendment also proposed to clarify that the landowner may recover the cost of a new boundary survey if a boundary marker is destroyed or removed.

The amendment proposed to add a separate section containing the current provisions on other forms of damage to property and certain new proposals. The amendment would have added damage to roads and culverts, and added littering and dumping as types of damage for which a trespasser would be liable and would have specified the mechanism for determining the amount of damages incurred. If the damage was caused intentionally, the amendment proposed that the trespasser be liable for 2 times the actual damages plus attorney's fees. The owner could also recover the costs associated with an enforcement proceeding if the damage resulted in a violation of any federal, state or local law or ordinance. The amendment also would have prohibited recovery under both provisions for the same specific damage and added a fiscal note.

Enacted law summary

Public Law 1995, chapter 585 restructures and expands upon current law relating to recovery for property damage. Damage to agricultural products, forest products and survey markers is separated from other types of damage to property. In cases in which agricultural products, forest products or survey markers are damaged, chapter 585 retains double damages for negligent acts and treble damages for intentional acts and provides a minimum damage award of \$250 for negligent damage and \$500 for intentional damage. Chapter 585 permits the recovery of costs associated with an enforcement proceeding if the damage results in a violation of any federal, state or local law or ordinance. It also clarifies that the landowner may recover the cost of a new boundary survey if a boundary marker is destroyed or removed.

In cases involving other types of damages, chapter 585 expands on current law to provide that a person who trespasses onto another's land is liable to the owner for damages caused and attorney's fees. It adds damage to a road, drainage ditch, culvert, bridge or sign as well as littering and dumping as types of damage for which a trespasser is liable, and specifies the mechanism for determining the amount of damages incurred. If the damage is caused intentionally, the trespasser is liable for 2 times the actual damages plus attorney's fees. The owner may also recover the costs associated with an enforcement proceeding if the damage results in a violation of any federal, state or local law or ordinance. Chapter 585 prohibits recovery of damages for the same specific damage under both of the sections of Title 14 permitting recovery for property damage.