

# MAINE STATE LEGISLATURE

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**STATE OF MAINE  
118TH LEGISLATURE**

**FIRST REGULAR SESSION  
AND  
FIRST SPECIAL SESSION**

**BILL SUMMARIES  
JOINT STANDING COMMITTEE  
ON  
JUDICIARY**

**JULY 1997**

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*Sen. Lloyd P. LaFountain III*

*Sen. John W. Benoit*

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**ONE HUNDRED EIGHTEENTH LEGISLATURE**  
**FIRST REGULAR AND FIRST SPECIAL SESSIONS**

**Summary Of Legislation Before The Joint Standing Committees**  
**August 1997**

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. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet ([www.state.me.us/legis/opla](http://www.state.me.us/legis/opla)).

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 Regular 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 IN CONCURRENCE</i> .....	<i>One body accepts ONTP report; the other indefinitely postpones the bill</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/FINAL PASSAGE</i> .....	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</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>OTP ND</i> .....	<i>Committee report Ought To Pass In New Draft</i>
<i>OTP ND/NT</i> .....	<i>Committee report Ought To Pass In New Draft/New Title</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>Bill held by Governor</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 First Regular Session (unless otherwise specified in a particular law) is June 26, 1997 and September 19, 1997 for the First Special Session.

*David E. Boulter, Director*  
 Offices Located in the State House, Rooms 101/107/135

give consistent investment instructions to the personal representative. This law applies retroactively to January 1, 1997.

**LD 386**                      **An Act to Amend the Civil Order of Arrest Procedures for Enforcement of Money Judgments**                      **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BENOIT GOOLEY	ONTP	

LD 386 proposed to amend the law governing the procedures for enforcement of money judgments. It would have required the court to set an amount of bail for a debtor whom the sheriff has arrested under a civil order of arrest and delivered to the District Court for disclosure or a contempt hearing. The bill proposed to require that the debtor post bail and not be released on personal recognizance.

**LD 397**                      **An Act to Change the Burden of Proof for Timber Trespass and Timber Theft Violations**                      **PUBLIC 152**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
LONGLEY	OTP-AM	S-103

LD 397 proposed to eliminate a culpable state of mind as an element of the civil violation of unlawful cutting of trees. The bill also proposed to eliminate boundary disputes as an exemption for cutting someone else's trees, and to require landowner permission to cut trees except in specific circumstances.

**Committee Amendment "A" (S-103)** proposed to authorize courts to order restitution for unlawful timber harvesting and to provide for a form of accomplice liability for timber theft.

***Enacted law summary***

Public Law 1997, chapter 152 makes the civil violation of unlawfully cutting someone else's trees easier to prosecute. It removes the culpable state of mind element, and deletes the exemption for boundary disputes. It authorizes courts to order restitution to the owner of the trees. It also authorizes prosecution of persons who are legally responsible for the unlawful cutting, even though they did not participate in the actual cutting.

**LD 398**                      **An Act to Recover Economic Loss Attributable to Tobacco Use**                      **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MILLS TOWNSEND	ONTP    MAJ OTP-AM    MIN	

LD 398 proposed to create a uniform prospective remedy for recovery of economic loss caused by tobacco exposure. Related costs and legal fees would also be recoverable. The liabilities created by the law would apply only to manufacturers and not to other members of the tobacco industry.

Manufacturers would be held prospectively to a strict liability standard and deprived of the contributory negligence defense; but victims would not recover noneconomic damages. This is parallel to the trade-off created by workers' compensation laws. Group losses asserted by the State, insurers or health care providers would be provable on the basis of market share liability with the aid of certain presumptions that the manufacturers are permitted to rebut or adjust. The bill is derived in part from legislation in Florida and Massachusetts.

**Committee Amendment "A" (S-293)** (Minority Report) proposed to limit the recoverable damages to medical costs, and to clarify that the remedy would not be exclusive.

See LD 1138 (Supplemental Budget), Public Law 1997, chapter 395, Part E, which clarifies the authority of the Commissioner of Human Services and the Attorney General to bring an action against any 3rd party who is or may be liable for any medical costs incurred by a beneficiary of Medicaid or the Maine Health Program.

See also LD 1904, Public Law 1997, chapter 560, Part F, establishing the Health Care Fund for Maine Citizens, to receive the proceeds of any settlement or award from the tobacco industry.

**LD 407**                      **An Act to Revise Judicial Separation**                      **PUBLIC 224**

<u>Sponsor(s)</u> LAFOUNTAIN		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> S-171
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LD 407 proposed to revise and update the judicial separation statutes.

**Committee Amendment "A" (S-171)** proposed to prohibit the court from granting a judicial separation when the parties are seeking the judicial separation for fraudulent purposes.

*Enacted law summary*

Public Law 1997, chapter 224 provides specific provisions that may be included in the court's judicial separation order pending a final separation decree. It also provides for spousal and child support, property disposition and modification and termination of a separation decree. Chapter 224 coordinates judicial separation procedures with divorce procedures to provide for dismissal of the separation action if a divorce is granted. A judicial separation may not be granted if sought for fraudulent purposes.

**LD 417**                      **An Act to Amend the Fee Schedule for Probate Filings**                      **PUBLIC 18**

<u>Sponsor(s)</u> MILLS		<u>Committee Report</u> OTP		<u>Amendments Adopted</u> S-13 MURRAY
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LD 417 proposed to amend the fee schedule for probate filings.