

MAINE STATE LEGISLATURE

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STATE OF MAINE
118TH LEGISLATURE

SECOND REGULAR SESSION
AND
SECOND SPECIAL SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
JUDICIARY

MAY 1998

MEMBERS:

Sen. Susan W. Longley, Chair

Sen. Lloyd P. LaFountain III

Sen. John W. Benoit

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

**Summary Of Legislation Before The Joint Standing Committees
May 1998**

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

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:

CON RES XXX..... Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE.....Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES.....House & Senate disagree; bill died
DIED IN CONCURRENCE.....One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT.....Action incomplete when session ended; bill died
EMERGENCY.....Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE.....Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE.....Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....Bill imposing local mandate failed to get 2/3 vote
INDEF PP.....Bill Indefinitely Postponed
ONTP..... Ought Not To Pass report accepted
OTP ND..... Committee report Ought To Pass In New Draft
OTP ND/NT..... Committee report Ought To Pass In New Draft/New Title
P&S XXX..... Chapter # of enacted Private & Special Law
PUBLIC XXX..... Chapter # of enacted Public Law
RESOLVE XXX..... Chapter # of finally passed Resolve
UNSIGNED.....Bill held by Governor
VETO SUSTAINED.....Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is June 30, 1998 and July 9, 1998 for the Second Special Session. Second Special Session laws include Public Laws beginning with Chapter 718, Private and Special Laws beginning with Chapter 82 and Resolves beginning with Chapter 117.

Committee Amendment "A" (H-942) (Majority Report) proposed to replace the bill. It proposed to authorize a surrogate to make any health care decision for a patient other than withholding or withdrawing life-sustaining treatment for a patient in any circumstance as long as there is no guardian or agent. The amendment also proposed to expand the list of persons who can act as a surrogate for a patient to include, after immediate family members, an adult who shares with the patient a relationship that is similar to a spousal relationship, i.e., an emotional, physical and financial relationship. (Not adopted)

House Amendment "A" to Committee Amendment "A" (H-967) proposed to prevent surrogates from withholding or withdrawing life-saving treatment. (Not adopted)

LD 253 **An Act Concerning Entry to Investigate Private Property for the Purpose of Forestry Examinations** **PUBLIC 694**

<u>Sponsor(s)</u> SNOWE-MELLO BENNETT	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-975
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LD 253 was referred to the Judiciary Committee from the Joint Standing Committee on Agriculture, Conservation and Forestry. It proposed to require agents of the Department of Conservation, Bureau of Forestry to obtain a search warrant prior to entering onto private land to investigate possible forest practices violations unless the agent has the consent of the landowner.

Committee Amendment "A" (H-975) proposed to replace the bill. It proposed to amend the "right of entry" provision in the forest practices law to remove the sentence exempting agents of the Department of Conservation, Bureau of Forestry from the application of trespass laws.

House Amendment "A" to Committee Amendment "A" (H-985) proposed to prohibit agents of the Department of Conservation, Bureau of Forestry from entering upon parcels of land less than 200 acres in size if the owner of that parcel resides there without first obtaining either the permission of the owner or a search warrant. (Not adopted)

Enacted law summary

Public Law 1997, chapter 694 amends the "right of entry" provision in the forest practices law to remove the sentence exempting agents of the Department of Conservation, Bureau of Forestry from the application of trespass laws.

LD 582 **An Act to Amend the Procedures for Medical Malpractice Screenings** **ONTP**

<u>Sponsor(s)</u> JABAR	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 582 proposed to limit medical malpractice screening panels to a review of professional negligence claims solely for the purpose of determining whether a claim is frivolous, rather than permitting panels to determine, as under

current law, whether professional negligence occurred. The bill also proposed to change the current law's confidentiality provisions concerning testimony and other evidence presented to screening panels. See also LD 1050 and LD 1784.

LD 869 **An Act to Amend the Statute of Limitations for Health Care Providers and Health Care Practitioners to Include a Discovery Rule** **ONTP**

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

LD 869 proposed to enact a discovery rule with respect to the statute of limitations relating to health care providers and health care practitioners. The bill would have required an action for professional negligence to be commenced within 3 years after a plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act of professional negligence of which the plaintiff complains.

Committee Amendment "A" (S-541) (Minority Report) proposed to replace the bill. It proposed to create a modified discovery rule for medical malpractice actions. It proposed that an action for professional negligence be brought within 3 years after the cause of action accrues, but not more than 6 years after the date of the act or omission of the health care provider or the health care practitioner that caused the injury. The cause of action would accrue when the plaintiff discovers or reasonably should have discovered the injury and the fact that the injury was caused by the act or omission of the health care provider or the health care practitioner. The 6-year maximum limitation would have applied in all cases other than causes of action related to foreign objects and cases in which a minor is the injured party. (Not adopted)

LD 916 **An Act to Allow Physician-assisted Deaths for the Terminally Ill** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BROOKS MITCHELL B	ONTP MAJ OTP-AM MIN	

LD 916 proposed to create the Death with Dignity Act. It would have allowed a mentally competent adult who is suffering from a terminal illness to request and obtain medication from a physician to end that patient's own life in a humane and dignified manner. The bill proposed safeguards to ensure that the patient's request is voluntary and based on an informed decision.

Committee Amendment "A" (H-788) (Minority Report) proposed to require that the counseling in which a patient participates include a discussion of choosing to die. It would have expanded the definition of "next of kin" to include an adult who has exhibited special concern for the patient and who is familiar with the patient's personal values. The amendment proposed to allocate appropriate authority to spouses and partners of a patient covered by the bill. The amendment would have given the physician the option of being present when the medication to end the patient's life is administered or ensuring that a member of the patient's next of kin is present. (Not adopted)