

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

*State Of Maine
122nd Legislature*

*First Regular Session and
First Special Session*

Bill Summaries

*Joint Standing Committee
on
Judiciary*

August 2005

Members:

Sen. Barry J. Hobbins, Chair

Sen. Lynn Bromley

Sen. David R. Hastings III

*Rep. Deborah L. Pelletier-Simpson,
Chair*

Rep. Sean Faircloth

Rep. Stan Gerzofsky

Rep. Marilyn E. Canavan

Rep. Mark E. Bryant

Rep. Michael Edward Dunn

Rep. Roger L. Sherman

Rep. Roderick W. Carr

Rep. Joan Bryant-Deschenes

Rep. Joan M. Nass

Rep. Donna M. Loring

Staff:

Margaret J. Reinsch, Senior Analyst

Office of Policy and Legal Analysis

13 State House Station

Augusta, ME 04333

(207) 287-1670



Maine State Legislature

OFFICE OF POLICY & LEGAL ANALYSIS

13 State House Station, Room 215 Cross State Office Building
Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

122nd Legislature
First Regular Session and First Special Session

Summary of Legislation Considered by the Joint Standing Committees
August 2005

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing select committees of the Maine Legislature this past session. 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 considered by the 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. A subject index for each committee is included immediately before the bill summaries for that committee, and a numerical index by LD number is included 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:

- CARRIED OVER Bill Carried Over to Second Regular Session
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
NOT PROPERLY BEFORE THE BODY..... Ruled out of order by the presiding officers; bill died
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 First Regular Session (unless otherwise specified in a particular law) is June 29, 2005; and for non-emergency legislation enacted in the First Special Session is September 17, 2005.

Joint Standing Committee on Judiciary

This bill was carried over by H.P. 1203 to any special or regular session of the 122nd Legislature.

LD 1378

An Act To Amend the Medical Liability Laws Concerning Communications of Sympathy or Benevolence

PUBLIC 376

<u>Sponsor(s)</u> TURNER SAVIELLO	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> S-323
---	-----------------------------------	------------------------------------

LD 1378 proposed to establish the types of and limit of damages available in medical malpractice actions. Compensatory damages that are economic damages would be unlimited. Compensatory damages that are noneconomic damages would be limited to \$250,000. Punitive damages would be limited to \$75,000. It proposed to prevent a health care practitioner's or health care provider employee's statement of sympathy or apology to a patient who has suffered an unanticipated medical outcome from being used against the practitioner or employee in a medical malpractice action.

The bill proposed to require the findings of the prelitigation screening panels to specify the damages attributable to the defendant or defendants in a medical malpractice action.

The bill proposed to provide that each defendant in a civil action is liable only for damages in direct proportion to the defendant's percentage of fault.

Committee Amendment "A" (S-323) proposed to replace the bill, but retain the bulk of the proposed language on communications of sympathy or benevolence. This amendment proposed to change the terminology to cover "civil actions for professional negligence" to be consistent with the rest of the Maine Health Security Act. This amendment also proposed to delete the term "fault" from the listing of subjects of communications expressed by a health care practitioner or provider or an employee of either in a medical liability case to the plaintiff or the plaintiff's relatives that are not admissible as evidence of an admission of liability or as an admission against interest. This amendment proposed to specifically provide that the section does not prohibit the admissibility of a statement of fault.

Enacted law summary

Public Law 2005, chapter 376 prevents a health care practitioner's or health care provider employee's statement of sympathy or apology to a patient who has suffered an unanticipated medical outcome from being used against the practitioner or employee in a civil action for professional negligence.

LD 1394

An Act To Require That Judicial Hearings Be Conducted in Hospitals Providing Involuntary Inpatient Psychiatric Services

ONTP

<u>Sponsor(s)</u> BRENNAN MARLEY	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
--	---------------------------------	---------------------------

Joint Standing Committee on Judiciary

LD 1394 proposed to require that an involuntary commitment hearing for a person who has been admitted to a hospital must be held in that hospital.

LD 1402 **An Act To Provide Guidelines, Standards and Rights for Children and the Guardians Who Care for Them** **PUBLIC 371**

<u>Sponsor(s)</u> ROSEN R		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> S-326
------------------------------	--	-----------------------------------	--	------------------------------------

LD 1402 proposed to give standing to "de facto guardians" to seek appointment as guardians of minor children, with or without the consent of the parents. The bill proposed that the Probate Court consider factors that establish the person as a de facto guardian, including actual custody and parenting of the child without legal formalities, and consider whether the appointment is in the best interests of the child. This bill is modeled on Minnesota de facto custodian law.

Committee Amendment "A" (S-326) proposed to replace the bill. It proposed to add three concepts to the definitional section of the article of the Probate Code governing guardians. It proposed to add specific language concerning the appointment of coguardians, and to provide for appointment of persons who qualify as de facto guardians as legal guardians if the appointment is in the best interest of the child. It proposed to allow the Probate Court to appoint counsel for an indigent de facto guardian, guardian or petitioner in a contested appointment proceeding when the parent or legal custodian has counsel, and to allow the Probate Court to order a parent to pay child support when a de facto guardian is appointed guardian for the child. The amendment proposed to require the court to set forth in all orders making appointments of guardians the basis for determining that the appointment is in the best interest of the child. The amendment proposed to provide that when a person seeks to terminate a guardianship against the guardian's consent, the person seeking to change the status quo has the burden of proving by a preponderance of the evidence that the termination of the guardianship is in the best interest of the ward. In a contested termination proceeding, the amendment proposed to allow the court to appoint counsel for any indigent guardian or petitioner.

Enacted law summary

Public Law 2005, chapter 371 gives standing to "de facto guardians" to seek appointment as guardians of minor children, with or without the consent of the parents. The Probate Court will consider factors that establish the person as a de facto guardian, including actual custody and parenting of the child without legal formalities, and consider whether the appointment is in the best interests of the child.

Chapter 371 adds definitions of "best interest of the child," "de facto guardian" and "demonstrated lack of consistent participation." It adds specific language concerning the appointment of coguardians, and adds a new provision to provide for appointment of persons who qualify as de facto guardians as legal guardians if the appointment is in the best interest of the child. The appointment may be made without the consent of the parents or legal custodians otherwise required to consent to a guardianship.

Chapter 371 allows the Probate Court to appoint counsel for an indigent de facto guardian, guardian or petitioner in a contested appointment proceeding when the parent or legal custodian has counsel. It also authorizes the Probate Court to order a parent to pay child support when a de facto guardian is appointed guardian for the child.