

# MAINE STATE LEGISLATURE

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*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*

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**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

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
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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.

## Joint Standing Committee on Judiciary

Chapter 371 requires 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. It also provides 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 court may appoint counsel for any indigent guardian or petitioner.

LD 1405

An Act To Prepare Maine for Public Health Emergencies

PUBLIC 383

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MAYO MILLER	OTP-AM	S-336

LD 1405 proposed to amend the laws regarding the control of communicable diseases in the following ways:

1. To remove the repeal of the laws regarding the ability of the Department of Health and Human Services to respond to an extreme public health emergency;
2. To allow for isolation or quarantine in a private home;
3. To grant the department rulemaking authority to address workforce needs and the need for dispensing drugs in an emergency situation;
4. To remove reference to the term "medical provider" and clarify reporting requirements of medical laboratories;
5. To rename the chapter to acknowledge that notifiable conditions include communicable, environmental and occupational diseases;
6. To eliminate the Medical Legal Advisory Panel;
7. To clarify that protected health information may be disclosed to health providers in the event of an actual or threatened outbreak or epidemic as declared by the Director of the Bureau of Health;
8. To clarify that, under the Maine Medical Laboratory Act, licensed and unlicensed laboratories have public health reporting requirements; and
9. To provide employment protection in an extreme public health emergency by protecting from unfavorable employment actions an employee who has been quarantined or isolated or who provides care to someone who has been isolated or quarantined during an extreme public health emergency.

**Committee Amendment "A" (S-336)** proposed to: revise the language concerning the adoption of rules pertaining to extreme public health emergencies; clarify the provision amending inspection requirements; designate rules regarding health care workers and the dispensing of drugs in an extreme public health emergency as major substantive rules; clarify that in the event of an actual or threatened epidemic or outbreak the Department of Health and Human Services, Bureau of Health may share only the amount of information necessary with health and human services providers for the purpose of carrying out their public health functions; clarify that