

MAINE STATE LEGISLATURE

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STATE OF MAINE
124TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed during
the First Regular Session of the 124th Maine Legislature coming from the

JOINT STANDING COMMITTEE ON JUDICIARY

July 2009

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STATE OF MAINE

124TH LEGISLATURE
FIRST REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 124th Maine Legislature.

The *Digest* is arranged alphabetically by committee, and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

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.....	Carried over to a subsequent session of the Legislature
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; bill died
ONTP (or Accepted ONTP report).....	Ought Not To Pass report accepted; bill died
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

The effective date for non-emergency legislation enacted in the First Regular Session of the 124th Legislature is September 12, 2009. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

Joint Standing Committee on Judiciary

This bill amends the landowner recreational liability law to include noncommercial aviation activities in the definition of "recreational or harvesting activities." A landowner who allows recreational or harvesting activities on the landowner's property is not liable for injuries or property damage that happens to those members of the public taking part in that activity.

Enacted Law Summary

Public Law 2009, chapter 156 amends the landowner recreational liability law to include noncommercial aviation activities in the definition of "recreational or harvesting activities." A landowner who allows recreational or harvesting activities on the landowner's property is not liable for injuries or property damage that happens to those members of the public taking part in that activity.

LD 897 An Act To Prohibit Mandatory Binding Arbitration ONTP

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

This bill requires agreements to submit to arbitration to be optional, except for collective bargaining agreements.

See LD 1256.

LD 898 An Act To Amend the Law Pertaining to Permanently Restricted Funds of Municipal Public Libraries ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
GILES RECTOR	ONTP	

This bill allows the governing board of a municipal public library to spend the dividend and interest income of an endowment fund, even if the fair value of the endowment fund is less than the historic dollar value of the endowment fund.

See LD 1402.

LD 944 An Act To Increase the Evidentiary Standard Required To Establish a Guardianship PUBLIC 349

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BRYANT M BRYANT B	OTP-AM	H-479

This bill amends the Probate Code to require clear and convincing evidence to support court findings under the Probate Code in guardianship and conservatorship proceedings. The two exceptions are that findings necessary to remove a guardian or conservator must be made upon a preponderance of the evidence and that a conservator

Joint Standing Committee on Judiciary

may be appointed if the court determines upon a preponderance of the evidence that property will be wasted or dissipated unless proper management is provided or that funds are needed for support, care and welfare.

Committee Amendment "A" (H-479)

This amendment replaces the bill. It clarifies that the clear and convincing standard applies only to nontemporary, adult guardianships and conservatorships in which the protected person does not consent to the guardianship or conservatorship. Consent is valid only if the alleged incapacitated person appears in court or provides voluntary written consent. It also clarifies that in conservatorship proceedings a court must find by clear and convincing evidence that the person is unable to manage the person's property or affairs but can find by a preponderance of the evidence that the person has property that needs protection. Finally, the amendment also clarifies the procedure for the termination of guardianship and conservatorship by a protected person. These provisions provide that the protected person must present a prima facie case that guardianship or conservatorship is not necessary and then the burden shifts to the respondent to show by clear and convincing evidence that the conservatorship or guardianship is necessary.

Enacted Law Summary

Public Law 2009, chapter 349 provides that the evidentiary standard to establish a guardianship or conservatorship is clear and convincing evidence for only nontemporary, adult guardianships and conservatorships in which the protected person does not consent to the guardianship or conservatorship. Consent is valid only if the alleged incapacitated person appears in court or provides voluntary written consent. It also clarifies that in conservatorship proceedings a court must find by clear and convincing evidence that the person is unable to manage the person's property or affairs but can find by a preponderance of the evidence that the person has property that needs protection. Chapter 349 also clarifies the procedure for the termination of guardianship and conservatorship by a protected person.

LD 945 An Act To Protect the Rights of Siblings Separated by Adoption

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BRYANT M BRYANT B	ONTP	

This bill protects the right of an adoptee who is under 21 years of age and has had sibling relationships disrupted by the adoption of that person from foster care to maintain contact with that person's siblings. An adoption court has the authority to weigh the person's best interest against the person's right to maintain sibling contact and, if contact is approved, may incorporate in the adoption decree any appropriate conditions of contact between siblings.

LD 947 An Act To Amend the Laws To Ensure Equity in the Judicial Retirement Program

PUBLIC 267

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
TRINWARD	OTP-AM	H-313

This bill implements the recommendation of the Judicial Compensation Commission that members of Maine's judiciary with retirement contributions earned in the Legislative Retirement Program be allowed to fully transfer these contributions to the Judicial Retirement Program. The bill also requires any member who transfers retirement contributions from the State Employee and Teacher Retirement Program or the Legislative Retirement Program to