

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

Resolve 2009, chapter 120 directs the Maine Commission on Domestic and Sexual Abuse to undertake a study on domestic violence, parental rights and responsibilities and the protection from abuse process. The commission shall invite interested parties to participate and shall report to the Joint Standing Committee on Judiciary by February 1, 2010. The report may include recommendations for further data collection, research and analysis to address the subjects that are included in the study. The committee may report out legislation to the 124th Legislature in 2010.

LD 1179 An Act To Create a Post-judgment Mechanism To Provide Relief for a Person Whose Identity Has Been Stolen and Falsely Used in Court Proceedings

PUBLIC 287

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-409

This bill is proposed by the Criminal Law Advisory Commission. It provides for a comprehensive post-judgment method of relief when a person's identity has been stolen and falsely used by another person in a criminal, civil violation or traffic infraction proceeding.

Committee Amendment "A" (H-409)

This amendment limits the right to appointed counsel for indigent petitioners to cases involving criminal convictions.

Enacted Law Summary

Public Law 2009, chapter 287 provides for a comprehensive post-judgment method of relief when a person's identity has been stolen and falsely used by another person in a criminal, civil violation or traffic infraction proceeding. The final outcome in that proceeding is immaterial. The relief offered is a court determination of factual innocence and the correction of the court records and related criminal justice agency records. This bill does not provide relief to a person who has stolen another person's identity and falsely used it in a criminal, civil violation or traffic infraction proceeding.

LD 1184 An Act To Improve the Process for Recovering Personal Property and for Filing Actions Involving Consumer Credit

PUBLIC 245

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HASTINGS	OTP-AM	S-175

This bill creates a new equitable cause of action to resolve disputes over rights in, title to or possession of personal property and to eliminate the personal property forcible entry and detainer action. The new course of action includes summary process, prompt relief and streamlined procedural requirements.

Committee Amendment "A" (S-175)

This amendment amends the bill to clarify that, for venue purposes, consumer transactions include rental-purchase agreements in addition to consumer credit transactions. The amendment retains, with a few changes, the text for the new cause of action to resolve disputes over rights in, title to or possession of personal property and to eliminate the personal property forcible entry and detainer action, but establishes a new separate chapter for the new cause of action. This amendment provides that the court may issue a writ of possession seven days after the judgement is

Joint Standing Committee on Judiciary

entered, which is consistent with current law. The bill allows a writ to be issued six days after the entry of the judgment. The bill provides that, in a contempt proceeding that may be brought against a defendant who does not comply with the writ of possession within two days of service, the judgment creates a rebuttable presumption that the defendant has the ability to put the sheriff or constable into possession of the property. This amendment clarifies that the presumption shifts the burden of production of evidence to the defendant, but that the burden of persuasion remains upon the plaintiff in the contempt proceeding. The bill as amended is not intended to create any new right to a jury trial, or to expand any right to a jury trial that may now exist under the Maine Revised Statutes, Title 14, section 6012.

Enacted Law Summary

Public Law 2009, chapter 245 creates a cause of action to resolve disputes over rights in, title to or possession of personal property and eliminates the current personal property forcible entry and detainer action. The new cause of action includes summary process, prompt relief and streamlined procedural requirements. For venue purposes, consumer transactions include rental-purchase agreements in addition to consumer credit transactions. It is not intended to create any new right to a jury trial, or to expand any right to a jury trial that may now exist under the Maine Revised Statutes, Title 14, section 6012.

LD 1188 An Act To Clarify Child Protection Proceedings

ONTP

Sponsor(s)

PERRY J

Committee Report

ONTP

Amendments Adopted

This bill amends the child protection laws. It:

1. Gives a person seven days to petition the court to quash a subpoena requesting telephone or utility bills or personal information;
2. Requires the Department of Health and Human Services to provide a report prior to a child protective proceeding detailing the expenses incurred prosecuting the proceeding and in attempting to unify a child with or prevent removal of the child from the child's family;
3. Requires the department to provide sworn testimony or affidavit as to efforts to notify the parents or custodian of a child or facts justifying exception to notice in a preliminary protection proceeding;
4. Requires District Courts to keep publicly accessible records relating to preliminary protection hearings including notice given, exceptions to notice taken and other information;
5. Requires parties under most circumstances to resolve disputes within the adjudicatory structure of the department after disposition in a protection proceeding has been ordered;
6. Clarifies what constitutes reasonable efforts in the department's requirement to rehabilitate or reunify a family;
7. Clarifies the rights of a parent when a child is in the custody of an adult relative; and
8. Strengthens the provisions requiring placement of a child with an adult relative.