

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

LD 1403 An Act To Implement the Uniform Law Conference Suggested Updates to Article 1 of the Uniform Commercial Code

PUBLIC 325

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HOBBINS	OTP-AM	S-234

This bill replaces Article 1 of the Uniform Commercial Code with the 2001 Revision adopted by the National Conference of Commissioners on Uniform State Laws. The bill includes amendments approved in 2003 as part of the revision of Article 7. Explanatory notes and Uniform Comments as prepared by the Uniform Law Commissioners are included. This Act takes effect January 1, 2010.

Committee Amendment "A" (S-234)

This amendment changes the effective date from January 1, 2010 to February 15, 2010.

Enacted Law Summary

Public Law 2009, chapter 325 replaces Article 1 of the Uniform Commercial Code with the 2001 Revision adopted by the National Conference of Commissioners on Uniform State Laws. Chapter 325 includes amendments approved in 2003 as part of the revision of Article 7. Explanatory notes and Uniform Comments as prepared by the Uniform Law Commissioners are included.

Public Law 2009, chapter 325 takes effect February 15, 2010.

LD 1404 An Act To Enact the Maine Uniform Power of Attorney Act

PUBLIC 292

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HOBBINS	OTP-AM	S-240

The Maine Uniform Power of Attorney Act, Maine UPOAA, replaces and expands the provisions relating to powers of attorney in Maine's Probate Code, currently in the Maine Revised Statutes, Title 18-A, Article 5, Part 5. This bill includes Uniform Comments and Maine Comments where applicable.

Committee Amendment "A" (S-240)

This amendment clarifies the definition of "incapacity." This amendment provides that a power of attorney is not valid unless acknowledged before a notary public or other individual authorized by law to take acknowledgments. It also clarifies that durable powers of attorney created in the bill must contain the notices in substantially the form provided in the bill. Minor omissions or deviations do not invalidate the power of attorney. This amendment includes appropriate cross-references to the Maine Uniform Trust Code with regard to the duties of a fiduciary. This amendment clarifies the agent's responsibilities with regard to safeguarding the principal's interests. This amendment cross-references guides to determining the reasonableness of an agent's compensation. This amendment clarifies liability for refusal to accept an acknowledged power of attorney when the person has a good faith belief about abuse, neglect, exploitation or abandonment of the principal and a report has been made to the Department of Health and Human Services. This amendment includes a reference to the principal's registered domestic partner with regard to payments for personal and family maintenance. It deletes the presumption that the principal's child is

Joint Standing Committee on Judiciary

an automatic permissible beneficiary of payments for personal and family maintenance. This amendment clarifies the agent's authority to make gifts. This amendment includes changes to the Maine Comments related to these changes.

Enacted Law Summary

Public Law 2009, chapter 292 enacts the Maine Uniform Power of Attorney Act, Maine UPOAA, which replaces and expands the provisions relating to powers of attorney in Maine's Probate Code, currently in the Maine Revised Statutes, Title 18-A, Article 5, Part 5. Under Maine UPOAA, the agent serves in the same way a guardian or conservator would in relation to the principal's property. Maine UPOAA requires that certain powers, mostly related to estate planning, be expressly and specifically conferred rather than be accepted as general powers. Maine UPOAA also provides civil penalties for refusal by a third party to accept a properly executed power of attorney if that third party holds assets of the principal. Maine UPOAA does, however, create reasonable exceptions to the requirement that a third party accept a properly executed and acknowledged power of attorney and it creates certain protections for persons who accept a power of attorney in good faith. Maine UPOAA contains provisions that protect a principal and the principal's successors in interest from an agent who violates its provisions. Maine UPOAA does not contain provisions related to so-called durable health care powers of attorney as currently provided in Article 5, Part 5 of Maine's Probate Code; however, Maine UPOAA does not affect Maine's Uniform Health-care Decisions Act in Article 5, Part 8 of Maine's Probate Code, which already, and concurrently, allows for the creation of so-called durable health care powers of attorney. A power of attorney is not valid unless acknowledged before a notary public or other individual authorized by law to take acknowledgments. Durable powers of attorney must contain the notices in substantially the form provided in the law, but minor omissions or deviations do not invalidate the power of attorney. Chapter 292 clarifies liability for refusal to accept an acknowledged power of attorney when the person has a good faith belief about abuse, neglect, exploitation or abandonment of the principal and a report has been made to the Department of Health and Human Services. Uniform Comments and Maine Comments are included where applicable.

Public Law 2009, chapter 292 is effective July 1, 2010.

**LD 1405 An Act To Implement the Updates to Article 7 of the Uniform
Commercial Code Suggested by the National Conference of
Commissioners on Uniform State Laws**

PUBLIC 324

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HOBBINS	OTP-AM	S-235

This bill replaces Article 7 of the Uniform Commercial Code with the 2003 version of the Article as approved by the National Conference of Commissioners on Uniform State Laws. Explanatory notes and Uniform Comments as prepared by the uniform law commissioners are included.

Committee Amendment "A" (S-235)

This amendment changes the effective date from January 1, 2010 to February 15, 2010.

Enacted Law Summary

Public Law 2009, chapter 324 replaces Article 7 (Documents of Title) of the Uniform Commercial Code with the 2003 version of the Article as approved by the National Conference of Commissioners on Uniform State Laws. Explanatory notes and Uniform Comments as prepared by the uniform law commissioners are included.

Public Law 2009, chapter 324 is effective February 15, 2010.