

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

June 2012

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STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD 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 LD is noted to the right of the LD title. The following describes the various final actions.

<i>CARRIED OVER</i>	<i>carried over to a subsequent session of the Legislature</i>
<i>CON RES XXX</i>	<i>chapter # of constitutional resolution passed by both houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; legislation died</i>
<i>DIED BETWEEN HOUSES</i>	<i>House & Senate disagreed; legislation died</i>
<i>DIED IN CONCURRENCE</i>	<i>defeated in each house, but on different motions; legislation died</i>
<i>DIED ON ADJOURNMENT</i>	<i>action incomplete when session ended; legislation died</i>
<i>EMERGENCY</i>	<i>enacted law takes effect sooner than 90 days after session adjournment</i>
<i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i>	<i>emergency failed to receive required 2/3 vote</i>
<i>FAILED, ENACTMENT or FINAL PASSAGE</i>	<i>failed to receive final majority vote</i>
<i>FAILED, MANDATE ENACTMENT</i>	<i>legislation proposing local mandate failed required 2/3 vote</i>
<i>HELD BY GOVERNOR</i>	<i>Governor has not signed; final disposition to be determined at subsequent session</i>
<i>LEAVE TO WITHDRAW</i>	<i>sponsor's request to withdraw legislation granted</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>ruled out of order by the presiding officer; legislation died</i>
<i>INDEF PP</i>	<i>indefinitely postponed; legislation died</i>
<i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ...	<i>ought-not-to-pass report accepted; legislation died</i>
<i>P&S XXX</i>	<i>chapter # of enacted private & special law</i>
<i>PUBLIC XXX</i>	<i>chapter # of enacted public Law</i>
<i>RESOLVE XXX</i>	<i>chapter # of finally passed resolve</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

LD 145

An Act To Clarify and Streamline Foreclosure Proceedings

**VETO
SUSTAINED**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BEAVERS	OTP-AM MAJ ONTP MIN	H-721 S-426 HASTINGS

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill requires a mortgagee bringing a civil foreclosure action on real property to produce the original mortgage note, signed by the mortgagor, as part of the complaint.

This bill was reported out of the Judiciary Committee with a unanimous Ought to Pass as Amended report, and was subsequently recommitted to the Judiciary Committee.

Committee Amendment "A" (H-425)

This amendment replaces the bill but retains the proposed requirement that a plaintiff seeking to foreclose on a mortgage is required to produce the original mortgage note, evidencing that the plaintiff has the right to foreclose, during the foreclosure action.

This amendment requires the plaintiff to produce the original note and all the endorsements associated with the note within 30 days of the defendant's request for production to allow the defendant to inspect and copy or photograph the original mortgage note. The plaintiff must specify the date, time and place for production of the note. The place may be at the courthouse, in an attorney's office or in a financial institution or any other place to which the plaintiff and defendant agree. The date of production must be within 40 days of the request for production.

If the plaintiff fails to produce the original note, the defendant may ask the court to dismiss the action without prejudice and the court shall award the defendant reasonable attorney's fees. If the defendant chooses not to request the dismissal of the action, the court may not allow the plaintiff to recover any interest or late fees on the mortgage loan between the date required for the note's production and the date when the note is produced.

If the plaintiff is not in possession of the note but the Uniform Commercial Code provisions on lost, stolen or destroyed instruments apply, the plaintiff's provision of a sworn affidavit pursuant to the Maine Revised Statutes, Title 11, section 3-1309 to the defendant constitutes sufficient compliance with the production requirements. If the plaintiff claims the note is an electronic transferable record, as defined in the Uniform Electronic Transactions Act, the plaintiff's furnishing of a sworn affidavit setting forth the proof required pursuant to Title 10, section 9416, subsection 6 constitutes sufficient compliance with the production requirements.

This amendment was adopted before the bill was recommitted to the Judiciary Committee and carried over to the Second Regular Session.

House Amendment "A" To Committee Amendment "A" (H-525)

This amendment changes the provisions of Committee Amendment "A" in the following ways.

1. It allows the plaintiff in a foreclosure action to produce an electronic equivalent of the mortgage note, loan agreement or other evidence of indebtedness.
2. It requires the defendant to send the written request to inspect the original mortgage note prior to judgment being

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entered.

3. It removes the specific time limit for the plaintiff to respond to the defendant's written request and to produce the note and instead requires the response and production to be in accordance with the Maine Rules of Civil Procedure.
4. It adds, as an acceptable place for inspection, the office of the plaintiff's attorney.
5. It removes the requirement that the court, upon motion of the defendant, dismiss the foreclosure action and award the defendant attorney's fees for failure of the plaintiff to produce the original note. Instead, this amendment requires the plaintiff to provide a valid excuse for failure to provide the note or an electronic equivalent and, in the event that the plaintiff fails to provide either the note or its electronic equivalent or a valid excuse, allows the court to fashion appropriate remedies.
6. It removes the provision that allows the plaintiff to provide a sworn affidavit in lieu of the original note in the event that the provisions of the Uniform Commercial Code regarding lost, stolen or destroyed instruments apply or the note is an electronic transferable record under the Uniform Electronic Transactions Act.

This amendment was not adopted.

Senate Amendment "A" To Committee Amendment "A" (S-270)

This amendment is the same as House Amendment "A" to Committee Amendment "A."

This amendment was not adopted.

Committee Amendment "B" (H-721)

This amendment is the majority report of the Joint Standing Committee on Judiciary for the Second Regular Session.

This amendment replaces the bill but retains the proposed requirement that a plaintiff seeking to foreclose on a mortgage is required, upon request of the defendant, to produce the original mortgage note, evidencing that the plaintiff has the right to foreclose, during the foreclosure action.

This amendment requires that the plaintiff respond within 30 days to a written request for production of the original note to allow the defendant to inspect and copy or photograph the original mortgage note. The plaintiff must specify the date, time and place for production of the note. The place may be at the courthouse, in an attorney's office or in a financial institution or any other place to which the plaintiff and defendant agree. The date of production must be at least 7 days after the plaintiff's written response and within 45 days of the request for production, which may be extended for good cause shown.

If the plaintiff fails to produce the original note, the defendant may ask the court to dismiss the action without prejudice.

The right of the defendant to request inspection of the note and any corresponding obligation of the plaintiff to produce the note for inspection terminate upon the entry of a judgment of foreclosure or other termination of the foreclosure action. The defendant may request inspection and copying only once, although a court may order otherwise for good cause shown.

If the plaintiff is not in possession of the note but the Uniform Commercial Code provisions on lost, stolen or destroyed instruments apply, the plaintiff's provision of a sworn affidavit pursuant to the Maine Revised Statutes, Title 11, section 3-1309 to the defendant constitutes sufficient compliance with the production requirements. Nothing in the 2 paragraphs added by this amendment alter in any respect the elements of proof and evidentiary standards applicable in any foreclosure action.

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If the plaintiff claims the note is an electronic transferable record, as defined in the Uniform Electronic Transactions Act, the plaintiff's furnishing of a sworn affidavit setting forth the proof required pursuant to Title 10, section 9416, subsection 6 constitutes sufficient compliance with the production requirements. If the plaintiff claims it is not in possession of the original note in circumstances other than those to which Title 11, section 3-1309 applies, the plaintiff may satisfy the production requirements by providing a sworn affidavit setting forth the basis for the assertion that it is nonetheless entitled to enforce the note.

Senate Amendment "A" To Committee Amendment "B" (S-426)

This amendment permits a defendant in a foreclosure action to request to be allowed to inspect and copy the original note and related endorsements within 90 days of service of the foreclosure summons or complaint on the defendant.

House Amendment "A" To Committee Amendment "B" (H-785)

The amendment provides that the right of a defendant to obtain production of the original note under the Maine Rules of Civil Procedure is not altered.

This amendment was not adopted.

LD 324 An Act To Authorize Parents with Power of Attorney To Make ONTP
Decisions Regarding the Education of Their Adult Children

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

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill allows a parent who has power of attorney to make education decisions on behalf of an adult child with mental retardation, serious emotional disturbance or other developmental disabilities.

This bill was originally referred to the Joint Standing Committee on Education and Cultural Affairs. It was reported out of that committee with a suggested re-referral to the Judiciary Committee.

LD 419 An Act To Ensure the Payment of Survivor Benefits to Certain Children ONTP

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

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill addresses the ability to inherit for purposes of intestate succession when a child is conceived using the gametes of a person after the person has died. This bill provides that the child has the same right to inherit from the decedent as if the child had been born prior to the decedent's death. This bill also clarifies that a parent-child relationship is established for the purposes of intestate succession between a child and a person if the child is conceived after the death of the person and the child is born to the person's surviving spouse using the gametes of the person. In each situation, the person must have consented in a record to be a parent in the given circumstances. The availability of Social Security survivor benefits is based on state intestate succession laws. This bill will