

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
125<sup>TH</sup> 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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MARGARET J. REINSCH, SENIOR ANALYST  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670

# STATE OF MAINE

125<sup>TH</sup> LEGISLATURE  
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## 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 125<sup>th</sup> 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 &amp; 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&amp;S XXX</i> .....	<i>chapter # of enacted private &amp; 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 125<sup>th</sup> 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.

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facilitate the eligibility for survivor benefits to be paid to posthumously conceived children.

**LD 651 An Act To Improve Tribal-State Relations**

**ONTP**

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

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

This bill allows the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians to adopt ordinances, determined by the Secretary of State to be equivalent to the State's freedom of access laws, that will exempt them from the State's freedom of access laws. The authorization is subject to approval of the respective tribe, nation or band and is repealed July 1, 2016.

**LD 978 An Act To Provide for School Enrollment and an Appeal Process in Specific Cases in Which Students Do Not Reside with Parents**

**PUBLIC 502**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STEVENS ROSEN R	OTP-AM	H-720

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

This bill contains recommendations of the Kinship Task Force. This bill:

1. Extends the duration of a guardianship under the Probate Code for a minor or incapacitated person from 6 months to 12 months (see also LD 170);
2. Authorizes the Probate Court in issuing, modifying or terminating a guardianship of a minor to enter an order providing transition arrangements that are in the best interests of the minor (see also LD 170);
3. Defines "kinship parent" as an adult who assumes responsibility for a child but is not a parent of that child. The kinship parent must hold power of attorney for the kinship family child or apply to the Probate Court for guardianship of the kinship family child in order to enroll the kinship family child in school and participate in educational decisions made for the kinship family child; and
4. Allows a superintendent to deny enrollment of a kinship family child in the superintendent's school administrative unit if the superintendent determines that enrollment is not in the best interest of the kinship family child and provides an appeal process for the kinship parent to appeal this denial.

**Committee Amendment "A" (H-720)**

This amendment adds a mandate preamble to and changes the title of the bill. It replaces the bill to provide that a student's safety in a parent's home is a basis for a superintendent to determine that it is in the best interest of the student to enroll in that school administrative unit when the student is residing in that unit with someone other than a parent or guardian. This amendment restructures the language to still require that the person with whom the child is

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living must be residing in the unit for other than education purposes, and then provides that one of three conditions, one of them the new safety requirement, must also be met. The other, existing conditions are that it is undesirable and impractical for that student to reside with the student's parent and that other extenuating circumstances exist which justify residence in the unit.

The amendment requires the school administrative unit to take reasonable steps to notify the student's parents or legal guardian if a request for enrollment is made by a person other than the parent or legal guardian.

The amendment provides that a superintendent is required to consult with knowledgeable employees of relevant school administrative units that the superintendent considers appropriate in order to determine if enrollment is in the student's best interest. The superintendent must notify the person requesting enrollment within 10 calendar days of the request whether the student may enroll in that unit. If the determination is to deny enrollment because the superintendent determines that enrollment in the school administrative unit is not in the best interest of the student, the superintendent must send written notice to the person with whom the student is residing of the denial of enrollment, the reason for the denial and the right to appeal to the Commissioner of Education.

It provides that, if the person appeals the superintendent's denial of enrollment, the Commissioner of Education must decide within 7 calendar days whether to overturn the superintendent's decision.

It provides that the Commissioner of Education must develop a model written explanation of the appeal process when the superintendent determines that attendance in that school administrative unit is not in the best interest of the student and distribute it to superintendents.

### **Enacted Law Summary**

Public Law 2011, chapter 502 provides that a student's safety in a parent's home is a basis for a superintendent to determine that it is in the best interest of the student to enroll in that school administrative unit when the student is residing in that unit with someone other than a parent or guardian. Current law provides that, for a superintendent to determine that a student's enrolling in that school administrative unit is in the student's best interest when the student is not living with a parent, 2 requirements must be met: first, that it is undesirable and impractical for that student to reside with the student's parent or that other extenuating circumstances exist that justify residence in the unit; and, second, that the person with whom the child is living is residing in the school administrative unit for other than just education purposes. Chapter 502 restructures the language to still require that the person with whom the child is living must be residing in the unit for other than education purposes, and then provides that one of three conditions, one of them the new safety requirement, must also be met. The other, existing conditions are that it is undesirable and impractical for that student to reside with the student's parent and that other extenuating circumstances exist which justify residence in the unit.

Chapter 502 requires the school administrative unit to take reasonable steps to notify the student's parents or legal guardian if a request for enrollment is made by a person other than the parent or legal guardian.

Chapter 502 provides that a superintendent is required to consult with knowledgeable employees of relevant school administrative units that the superintendent considers appropriate in order to determine if enrollment is in the student's best interest. The superintendent must notify the person requesting enrollment within 10 calendar days of the request whether the student may enroll in that unit. If the determination is to deny enrollment because the superintendent determines that enrollment in the school administrative unit is not in the best interest of the student, the superintendent must send written notice to the person with whom the student is residing of the denial of enrollment, the reason for the denial and the right to appeal to the Commissioner of Education.

Chapter 502 provides that, if the person appeals the superintendent's denial of enrollment, the Commissioner of Education must decide within 7 calendar days whether to overturn the superintendent's decision. The Commissioner of Education must develop a model written explanation of the appeal process when the superintendent determines that attendance in that school administrative unit is not in the best interest of the student and distribute it to

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superintendents.

**LD 1377 An Act To Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

**PUBLIC 564**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SANBORN BRANNIGAN	OTP-AM	H-800

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

This bill enacts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act as a new Part of Article 5 of the Probate Code. The uniform comments adopted by the National Conference of Commissioners on Uniform State Laws are included.

The bill addresses the issue of jurisdiction over adult guardianships, conservatorships and other protective proceedings, providing an effective mechanism for resolving multistate jurisdictional disputes. It contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The objective is that only one state will have jurisdiction at any one time.

The bill takes effect January 1, 2012, but applies to all guardianships and conservatorships, including those created prior to that date.

**Committee Amendment "A" (H-800)**

This amendment contains changes to the bill recommended by the Probate and Trust Law Advisory Commission.

This amendment changes the effective date and application dates to July 1, 2013.

**Enacted Law Summary**

Public Law 2011, chapter 564 makes changes to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act recommended by the Probate and Trust Law Advisory Commission.

The revisions to the Maine Revised Statutes, Title 18-A, section 5-512 address inconsistencies between the definitions in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and related definitions in the Probate Code.

The revisions to Title 18-A, section 5-521, subsection (a), paragraph (1); section 5-524, subsection (a); and section 5-526, subsections (b) and (c) eliminate ambiguous language and extend the emergency term of a guardian from 90 days to 6 months.

The change to Title 18-A, section 5-531, subsection (c) eliminates the court's obligation to hold a hearing if a hearing would serve no useful purpose.

The changes to Title 18-A, section 5-531, subsection (d), paragraph (2); section 5-531, subsection (e), paragraph (2); and section 5-532, subsection (d), paragraph (1) identify the evidentiary standard to be applied to proceedings involving the transfer of guardianship and protective proceedings.

The word "disposition" is added to Title 18-A, section 5-531, subsection (e), paragraph (3) because the term "management" may be too narrow to accurately describe the actions a conservator might need to take.