

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



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

JOINT STANDING COMMITTEE ON JUDICIARY

July 2011

MEMBERS:

SEN. DAVID R. HASTINGS III, CHAIR
SEN. RICHARD G. WOODBURY
SEN. CYNTHIA A. DILL

REP. JOAN M. NASS, CHAIR
REP. G. PAUL WATERHOUSE
REP. MICHAEL G. BEAULIEU
REP. RALPH W. SARTY, JR.
REP. BRADLEY S. MOULTON
REP. KAREN D. FOSTER
REP. CHARLES R. PRIEST
REP. CHARLES B. KRUGER
REP. MAEGHAN MALONEY
REP. MEGAN M. ROCHELO

STAFF:

MARGARET J. REINSCH, SENIOR ANALYST
CURTIS C. BENTLEY, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

STATE OF MAINE
125TH LEGISLATURE
FIRST 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 First 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.

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

The effective date for non-emergency legislation enacted in the First Regular Session of the 125th Legislature is September 28, 2011. 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

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.

This bill was carried over to any special and/or regular session of the 125th Legislature pursuant to joint order, H.P. 1190.

LD 983 An Act To Amend the Maine Limited Liability Company Act

**PUBLIC 113
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PRIEST GERZOFSKY	OTP-AM	H-135

This bill makes several changes to the Maine Limited Liability Company Act, which takes effect July 1, 2011. Most of the changes are technical, but several are substantive.

Committee Amendment "A" (H-135)

This amendment makes two changes.

It clarifies the language concerning making false statements on documents executed and filed with the office of the Secretary of State to identify that such an act is the crime of unsworn falsification, which is consistent with the current limited liability company laws and the current limited liability partnership laws.

This amendment also requires the minimum disclosure on the annual report of one person who can accept service of process on the entity when the agent has resigned without providing a new service of process contact, or when the agent cannot be located. Providing the name and address of a member, manager or other authorized person to accept service of process is consistent with the Model Registered Agents Act.

Enacted Law Summary

Public Law 2011, chapter 113 makes several changes to the Maine Limited Liability Company Act, which takes effect July 1, 2011. The technical changes remove redundant language, correct cross-references, clarify definitions and make grammatical changes. Chapter 113 deletes the unnecessary inclusion of the word "domestic" when referring to limited liability companies formed in this State.

Chapter 113 makes the following substantive changes.

1. The bill amends the definition of "low-profit limited liability company" by striking all references to foreign limited liability companies. The change allows the laws of the state of organization to govern whether a foreign limited liability company is a low-profit limited liability company. The change conforms the statute to those of other states that have adopted low-profit limited liability company legislation.
2. Under the current law, the articles of organization require the organizer to designate whether the limited liability company will be a member-run limited liability company or a manager-run limited liability company. This designation establishes apparent authority for the limited liability company. If the limited liability company is a member-run entity, each of the members has authority to bind the limited liability company; if the limited liability company is manager-run, each manager has the authority to bind the limited liability company. The Maine Limited Liability Company Act, which takes effect July 1, 2011, abandons authority by designation. The certificate of

Joint Standing Committee on Judiciary

formation under the Maine Limited Liability Company Act generally will not contain any information about authority. Further, the new provisions concerning apparent authority do not acknowledge or give any effect to designations in articles of organization filed under the current law. As a consequence, once the Maine Limited Liability Company Act takes effect, the designations in articles of organization filed under the existing law will have no significance, yet many practitioners will continue to rely on designations in filed articles of organization as though the designations mattered. To accommodate this likelihood, Title 31, section 1693, subsection 2, paragraph B provides that the designations will be treated as being included in the limited liability company's limited liability company agreement. Chapter 113 strikes language that treats the designation as part of the limited liability company agreement. In its place, chapter 113 adds provisions that treat the designation as a statement of authority. The change significantly alters apparent authority for limited liability companies formed under the existing law that have not actually filed a statement of authority pursuant to section 1542. In the absence of a statement of authority, every member, manager, president and treasurer has authority to bind the limited liability company with third parties. By treating the designation as a statement of authority, the change to section 1693, subsection 2, paragraph B limits the scope of persons having apparent authority to those designated in the filed articles. As a consequence, chapter 113 gives meaning to the designation that closely conforms to the meaning intended by the designation under the existing law, at least for purposes of apparent authority.

Chapter 113 clarifies the language concerning making false statements on documents executed and filed with the office of the Secretary of State to identify that such an act is the crime of unsworn falsification, which is consistent with the current limited liability company laws and the current limited liability partnership laws.

Chapter 113 also requires the minimum disclosure on the annual report of one person who can accept service of process on the entity when the agent has resigned without providing a new service of process contact, or when the agent cannot be located. Providing the name and address of a member, manager or other authorized person to accept service of process is consistent with the Model Registered Agents Act.

Public Law 2011, chapter 113 was enacted as an emergency measure effective July 1, 2011.

LD 988 An Act Concerning Immunity for School Administrative Units in the Discharge of Their Responsibilities ONTP

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

This bill provides immunity for school administrative units providing medical services to students as authorized by state law.

LD 1005 An Act To Clarify the Standard of Proof for Traffic Infractions PUBLIC 156

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MOULTON	OTP-AM	H-220

This bill places the burden of proof of a traffic infraction on the State and establishes a standard of clear and convincing evidence for proof of a violation.