

MAINE STATE LEGISLATURE

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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

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STATE OF MAINE
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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 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

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.

Joint Standing Committee on Judiciary

Committee Amendment "A" (H-220)

This amendment changes the bill to make the law consistent with the Maine Rules of Civil Procedure, Rule 80F, which establishes that the adjudication of a traffic infraction is based on a preponderance of the evidence. The statute is currently silent on the standard of proof. This amendment also changes the title of the bill.

Enacted Law Summary

Public Law 2011, chapter 156 places the burden of proof of a traffic infraction on the State and makes the law consistent with the Maine Rules of Civil Procedure, Rule 80F, which establishes that the adjudication of a traffic infraction is based on a preponderance of the evidence.

LD 1021 An Act To Transfer Jurisdiction of Traffic Adjudications

**MAJORITY
(ONTP) REPORT**

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------|-------------------------|---------------------------|
| MOULTON | ONTP MAJ OTP-AM MIN | |

This bill transfers the jurisdiction over traffic infractions from the District Court to the Secretary of State, effective January 1, 2014.

The Secretary of State, in consultation with the Administrative Office of the Courts, shall submit a report on the transition to the First Regular Session of the 126th Legislature.

Committee Amendment "A" (H-588)

This amendment is the minority report of the Joint Standing Committee on Judiciary. This amendment incorporates a fiscal note.

This amendment was not adopted.

LD 1034 An Act To Amend the Law Regarding Comparative Negligence

**MAJORITY
(ONTP) REPORT**

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------|-------------------------|---------------------------|
| DILL C | ONTP MAJ OTP MIN | |

Currently, the comparative negligence law prohibits recovery if the claimant is equally at fault with or more at fault than the defendant. This bill amends the law to prohibit recovery if the claimant is found to be more at fault than the defendant.