

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
125<sup>TH</sup> 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  
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 First 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.

*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 125<sup>th</sup> 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*

**LD 1193 An Act To Strengthen Confidentiality Laws for Child Victims of Crime**

**ONTP**

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

Current law requires the Department of Health and Human Services to grant access to confidential records held by the department in connection with the department's child protective activities if a court determines that the records may be necessary for the determination of an issue before the court. Access is limited to counsel of record unless otherwise produced by the court.

This bill requires counsel of record to establish a basis for the counsel's claim that the confidential records contain evidence that is both material and favorable to the counsel's case before the court may grant access.

**LD 1198 An Act To Reduce Regulations for Residential Rental Property Owners**

**PUBLIC 405**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PICCHIOTTI SNOWE-MELLO	OTP-AM	H-575 H-595 NASS

This bill makes changes to the residential rental property laws, including:

1. Eliminating the presumption that a forcible entry and detainer action commencing after a tenant files a fair housing complaint is retaliatory;
2. Removing, in a forcible entry and detainer action, the tenant's affirmative defense that the landlord failed to provide reasonable accommodation pursuant to the Maine Human Rights Act or the federal Fair Housing Act;
3. Preventing the tenant from raising the presumption of retaliation if the forcible entry and detainer action is being brought for failure to pay the rent or substantial damage to the premises by the tenant;
4. Requiring a tenant disputing a forcible entry and detainer action to submit an affidavit to the court that the tenant is not in arrears in payment of the rent as of the date of the filing of the forcible entry and detainer action;
5. Changing the responsibilities of a landlord regarding property abandoned by the tenant, including allowing the landlord to require that the tenant pay any rent or storage fees to the landlord prior to the landlord's releasing the property;
6. Removing the requirement that the landlord disclose to a prospective tenant the existence of a bedbug infestation in a neighboring unit and the history of inspection of the rental units;
7. Requiring the landlord to provide energy efficiency disclosures only upon request by a prospective tenant; and
8. Amending the radon testing requirements to require testing only when the residential rental property is acquired

## *Joint Standing Committee on Judiciary*

by a landlord and only for those units on the lowest level of that residential property.

### **Committee Amendment "A" (H-575)**

This amendment replaces the bill and does the following:

1. It provides that there must be a reasonable basis for the fair housing complaint for it to be a defense to an eviction and provides that the presumption of retaliation does not apply if the fair housing complaint was filed after the tenant was served with an eviction notice;
2. It defines the term "reasonable accommodation" and provides that there must be a causal link between the reasonable accommodation and the conduct that is the subject of the eviction action;
3. It provides that if an action for forcible entry and detainer is brought for failure to pay rent or for causing substantial damages to the premises, there is no presumption of retaliation unless the tenant has asserted that tenant's rights under the Maine Revised Statutes, Title 14, section 6026, which allows the tenant to offset rent with expenditures made by the tenant for repairs or heating costs if included in the rent;
4. It provides that the tenant must attach an affidavit to a Notice of Appeal stating that the tenant has complied with the law in order to stay the issuance of a writ of possession pending an appeal;
5. It provides that a lease or tenancy at will agreement may permit a landlord to dispose of property abandoned by the tenant without liability as long as the landlord complies with the applicable notice requirements;
6. It reduces the time a tenant has to respond to a notice to dispose of the tenant's property that is being stored by the landlord from 14 days to 7 days;
7. It reduces the time a landlord must continue to store the tenant's property if that tenant responds to the notice to dispose within the required time frame from 24 days to 14 days;
8. It provides that a tenant may waive the rights provided in law addressing unclaimed property. If the tenant's waiver is oral the landlord must confirm this waiver in writing;
9. It provides that the notice of disposal may be sent after entry of judgment for the landlord but prior to the service of the writ of possession or the tenant's vacating the premises. However, if the tenant is still in possession of the rental unit, the tenant would still have at least 7 days after the notice is sent or 48 hours after the writ of possession is served, whichever is later, to claim the property;
10. It repeals the law that requires a landlord to provide financial assistance to tenants to control bed bugs;
11. It requires landlords to disclose the cost of the tenant's compliance with the requested inspection or bed bug control measures and allows a landlord to provide financial assistance in preparing the unit for bed bug treatment and provides that the landlord is not liable to provide the tenant with alternate lodging or to replace the tenant's personal property;
12. It provides that the presumption of retaliation only applies if the tenant complained about the bed bugs prior to being served with the eviction notice and the presumption of retaliation does not apply if the action for forcible entry and detainer was brought for failure to pay rent or causing substantial damages to the premises;
13. It provides that a prospective tenant who would be paying for a utility has the right to obtain from the regulated utility or the vendor the amount of consumption for the prior 12 months;
14. It requires the landlord to provide an energy efficiency disclosure statement to the tenant or lessee who is paying

## *Joint Standing Committee on Judiciary*

for an energy supply for the unit or upon the request of a tenant or lessee;

15. It allows a landlord to either place a disclosure of the tenant's right to obtain the energy use history of the rental unit in the application or give the tenant the energy efficiency disclosure statement; and

16. It removes the requirement that the landlord post the disclosure statement in a prominent location in the property that is being offered for rent or lease and reduces the time a landlord must retain the statement signed by the tenant from a minimum of 7 years to 3 years.

### **House Amendment "A" To Committee Amendment "A" (H-595)**

Committee Amendment "A" provides that a landlord may send a notice at any time after entry of judgment in favor of the landlord to a tenant of the landlord's intent to dispose of property remaining in a rental unit. It clarifies that the notice may also be sent at any time after the tenant vacates the rental unit.

This amendment also includes a provision inadvertently left out of Committee Amendment "A" that provides that a lease or tenancy at will agreement may permit a landlord to dispose of property abandoned by a tenant without liability as long as the landlord complies with applicable notice requirements.

### **Enacted Law Summary**

Public Law 2011, chapter 405 does the following:

1. It provides that there must be a reasonable basis for the fair housing complaint for it to be a defense to an eviction and provides that the presumption of retaliation does not apply if the fair housing complaint was filed after the tenant was served with an eviction notice;
2. It defines the term "reasonable accommodation" and provides that there must be a causal link between the reasonable accommodation and the conduct that is the subject of the eviction action;
3. It provides that if an action for forcible entry and detainer is brought for failure to pay rent or for causing substantial damages to the premises, there is no presumption of retaliation unless the tenant has asserted that tenant's rights under the Maine Revised Statutes, Title 14, section 6026, which allows the tenant to offset rent with expenditures made by the tenant for repairs or heating costs if included in the rent;
4. It provides that the tenant must attach an affidavit to a Notice of Appeal stating that the tenant has complied with the law in order to stay the issuance of a writ of possession pending an appeal;
5. It provides that a lease or tenancy at will agreement may permit a landlord to dispose of property abandoned by the tenant without liability as long as the landlord complies with the applicable notice requirements;
6. It reduces the time a tenant has to respond to a notice to dispose of the tenant's property that is being stored by the landlord from 14 days to 7 days;
7. It reduces the time a landlord must continue to store the tenant's property if that tenant responds to the notice to dispose within the required time frame from 24 days to 14 days;
8. It provides that a tenant may waive the rights provided in law addressing unclaimed property. If the tenant's waiver is oral the landlord must confirm this waiver in writing;
9. It provides that the notice of disposal may be sent after entry of judgment for the landlord but prior to the service of the writ of possession or at any time after the tenant vacates the premises. However, if the tenant is still in possession of the rental unit, the tenant would still have at least 7 days after the notice is sent or 48 hours after the writ of possession is served, whichever is later, to claim the property;

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- 10. It repeals the law that requires a landlord to provide financial assistance to tenants to control bed bugs;
- 11. It requires landlords to disclose the cost of the tenant's compliance with the requested inspection or bed bug control measures and allows a landlord to provide financial assistance in preparing the unit for bed bug treatment and provides that the landlord is not liable to provide the tenant with alternate lodging or to replace the tenant's personal property;
- 12. It provides that the presumption of retaliation only applies if the tenant complained about the bed bugs prior to being served with the eviction notice and the presumption of retaliation does not apply if the action for forcible entry and detainer was brought for failure to pay rent or causing substantial damages to the premises;
- 13. It provides that a prospective tenant who would be paying for a utility has the right to obtain from the regulated utility or the vendor the amount of consumption for the prior 12 months;
- 14. It requires the landlord to provide an energy efficiency disclosure statement to the tenant or lessee who is paying for an energy supply for the unit or upon the request of a tenant or lessee;
- 15. It allows a landlord to either place a disclosure of the tenant's right to obtain the energy use history of the rental unit in the application or give the tenant the energy efficiency disclosure statement; and
- 16. It removes the requirement that the landlord post the disclosure statement in a prominent location in the property that is being offered for rent or lease and reduces the time a landlord must retain the statement signed by the tenant from a minimum of 7 years to 3 years.

**LD 1199      An Act To Expedite the Eviction Process in Certain Types of Cases**

**ONTP**

Sponsor(s)

CELLI

Committee Report

ONTP

Amendments Adopted

Current law allows a tenant who is at least 7 days in arrears in the payment of rent to pay the full amount of rent due by the expiration of the notice of the termination of tenancy, in which case the notice is void.

This bill amends the forcible entry and detainer process to give the landlord the choice as to whether to allow an opportunity to cure an arrearage of 7 or more days in the payment of rent if the tenant has paid rent for 2 or fewer months.

It direct the court to establish an expedited process to handle the determination of the cases in which the tenant has paid rent for 2 or fewer months and is at least 7 days in arrears. It requires the hearing on the complaint to be held no later than 5 days after the return day. This bill also provides that if the landlord is successful in the action, either because the tenant fails to appear and is defaulted or because the court determines that the tenant failed to show sufficient cause, the court shall issue a judgment for the landlord and shall issue the writ of possession at the time the judgment is issued. Current law delays the writ of possession for 7 days after the judgment.