

MAINE STATE LEGISLATURE

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STATE OF MAINE
127TH LEGISLATURE
SECOND REGULAR SESSION



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

JOINT STANDING COMMITTEE ON JUDICIARY

May 2016

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STATE OF MAINE

127TH LEGISLATURE

SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 127th 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. An appendix provides a summary of relevant session statistics.

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 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 127th Legislature is July 29, 2016. 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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pending or if any other related action is pending before any court of this State or another state. If the proceeding is in a probate court in this State, the judge of probate must transfer the case to the District Court.

LD 951 An Act To Restore Judicial Discretion in the Administration of Fines ONTP

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|--------------------|-------------------------|---------------------------|
| DION M BRAKEY E | ONTP | |

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill:

1. Lowers the maximum amount of earnings that may be garnished to enforce payment of a judgment arising from a consumer credit transaction;
2. Makes some criminal fines discretionary rather than mandatory;
3. Prohibits revoking probation solely on the basis of failure to pay a fine;
4. Allows the court to reduce a fine in limited circumstances upon a showing of indigence;
5. Prohibits incarceration solely for failure to pay a fine;
6. Eliminates the failure to pay warrant; and
7. Limits suspensions under the Maine Revised Statutes, Title 29-A and contempt proceedings under Title 14 for indigent defendants.

The legislative recommendations of the Intergovernmental Pretrial Justice Reform Task Force are included in LD 1629.

LD 1065 An Act To Amend the Law Regarding Temporary Powers of Attorney over Minors and To Require Organizations To Screen Agents before Providing Care PUBLIC 467

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------------|-------------------------|---------------------------|
| SANDERSON D HAMPER J | OTP-AM | H-657 |

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill amends current law allowing a parent or guardian to execute a temporary power of attorney for up to 12 months, delegating the powers regarding the care and custody of a child or incapacitated person, by doing the following:

1. Limiting the power of attorney to exclude the parent or guardian's powers regarding the performance of an abortion for the minor or the incapacitated person or the termination of parental rights to the minor;
2. Clarifying that executing this temporary power of attorney does not deprive the parent or guardian of any

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parental or legal authority regarding the care and custody of the minor or incapacitated person;

3. Clarifying that a parent or guardian's granting of this temporary power of attorney does not constitute abandonment, abuse or neglect, if the parent or guardian either executes a new power of attorney or takes custody of the child or incapacitated person as soon as reasonably possible after the termination of the temporary power of attorney;

4. Providing that the agent with the power of attorney may not receive compensation; and

5. Clarifying that this power of attorney does not implicate the laws regarding foster care.

Committee Amendment "A" (H-657)

This amendment replaces the bill. It provides for the execution of a power of attorney by a parent to allow for the care of the parent's minor child by another person.

The amendment provides that a power of attorney cannot authorize the agent to consent to the termination of a parent's parental rights. It also provides that a delegation of powers by a power of attorney does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor.

The amendment creates a new subsection that applies to powers of attorney executed by a parent or a guardian for the purpose of providing temporary care of a minor. It specifically provides that, without other evidence, the execution of the power of attorney by a parent or guardian does not constitute abandonment, abuse or neglect of the minor.

The amendment prohibits the agent from receiving any financial assistance from the State for the care of the minor, except for any assistance that the minor or the agent is entitled to receive pursuant to any state or federal program.

The amendment provides that a minor subject to a power of attorney is not in foster care and is not considered a ward of the State. In addition, the agent named in the power of attorney is not considered a family foster home and is not required to be licensed as a family foster home by virtue of the power of attorney. However, the agent is not prohibited from becoming a foster home and the minor may be placed with the agent if the State takes custody of the minor.

The amendment provides that an organization, other than an organization whose primary purpose is to provide free legal services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor must ensure that a background check is completed for the agent and any adult members of the agent's household. The background check must include screening for child abuse cases and a federal criminal history record check.

The amendment requires that the organization keep records of training and transcripts of background checks and that the organization must make those records available to a parent or guardian executing a power of attorney under these provisions and to the child welfare ombudsman and any local, state or federal authority performing an investigation involving the agent, the parent or guardian or the minor.

The amendment imposes penalties on an organization that does not act as required and on employees or volunteers of an organization that knowingly continue to assist parents, guardians or agents in completing a power of attorney for a minor after a background check returns disqualifying information.

Enacted Law Summary

Public Law 2015, chapter 467 provides for the execution of a power of attorney by a parent to allow for the care of the parent's minor child by another person. A power of attorney cannot authorize the agent to consent to the

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termination of a parent's parental rights. It also provides that a delegation of powers by a power of attorney does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or incapacitated person. It specifically provides that, without other evidence, the execution of the power of attorney by a parent or guardian does not constitute abandonment, abuse or neglect of the minor. The agent is prohibited from receiving any financial assistance from the State for the care of the minor, except for any assistance that the minor or the agent is entitled to receive pursuant to any state or federal program. It also provides that a minor subject to a power of attorney is not in foster care and is not considered a ward of the State. In addition, the agent named in the power of attorney is not considered a family foster home and is not required to be licensed as a family foster home. However, the agent is not prohibited from becoming a foster home and the minor may be placed with the agent if the State takes custody of the minor.

Public Law 2015, chapter 467 provides that an organization, other than an organization whose primary purpose is to provide free legal services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor must ensure that a background check is completed for the agent and any adult members of the agent's household. The background check must include screening for child abuse cases and a federal criminal history record check.

The organization must keep records of training and transcripts of background checks and the organization must make those records available to a parent or guardian executing a power of attorney under these provisions and to the child welfare ombudsman and any local, state or federal authority performing an investigation involving the agent, the parent or guardian or the minor.

Public Law 2015, chapter 467 imposes penalties on an organization that does not act as required and on employees or volunteers of an organization that knowingly continue to assist parents, guardians or agents in completing a power of attorney for a minor after a background check returns disqualifying information.

LD 1163 An Act To Amend the Garnishment Laws of the State ONTP

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------|-------------------------|---------------------------|
| STETKIS J | ONTP | |

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill establishes a process for the garnishment of state income tax refunds for the satisfaction of money judgments.

LD 1177 An Act To Enact the Recommendations of the Probate and Trust Law Advisory Commission Regarding the Maine Uniform Fiduciary Access to Digital Assets Act ONTP

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

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill enacts the Uniform Fiduciary Access to Digital Assets Act as the Maine Uniform Fiduciary Access to Digital Assets Act as a new Article 10 in the Maine Revised Statutes, Title 18-A. The Probate and Trust Law Advisory Commission recommended enactment in the report submitted to the Joint Standing Committee on