

MAINE STATE LEGISLATURE

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STATE OF MAINE
127TH LEGISLATURE
FIRST REGULAR SESSION



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

JOINT STANDING COMMITTEE ON JUDICIARY

August 2015

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STATE OF MAINE

127TH LEGISLATURE
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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 First 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 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 127th Legislature is October 15, 2015. 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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than the child for whom a support order is being sought, even if that adjustment results in a reduction of a previously established award.

4. It corrects an inconsistency in amounts withheld from an obligor's withholding from \$2 per week to \$2 per pay period.

5. It removes the requirement that the Department of Health and Human Services include blank forms for modification along with the notice that the child support obligation is suspended while the obligor is receiving public assistance.

LD 1338 An Act Regarding Legal Representation in Certain Eviction Actions

PUBLIC 195

Sponsor(s)

FREDETTE

Committee Report

OTP

Amendments Adopted

Current law provides that a person who is the sole member of a limited liability company or is a member of a limited liability company that is owned by a married couple or registered domestic partners who is not an attorney may appear in court for that company in an action for forcible entry and detainer. The bill limits the application of this provision of law to an individual. The bill also allows an individual who is not an attorney and who is a member of a limited liability company that is owned by an individual and that individual's issue to appear in court for that company in an action for forcible entry and detainer. The bill also strikes the statutory sunset of the provision.

Enacted Law Summary

Public Law 2015, chapter 195 eliminates the repeal of the current law that allows a person who is the sole member of a limited liability company or is a member of a limited liability company that is owned by a married couple or registered domestic partners who is not an attorney to appear in court for that company in an action for forcible entry and detainer. It also allows an individual who is not an attorney and who is a member of a limited liability company that is owned by an individual and that individual's issue to appear in court for that company in an action for forcible entry and detainer.

LD 1340 An Act To Enact the Preservation of Religious Freedom Act

**Leave to Withdraw
Pursuant to Joint
Rule**

Sponsor(s)

BURNS
CRAFTS

Committee Report

Amendments Adopted

This bill enacts the Preservation of Religious Freedom Act. It codifies legislative findings that summarize the enshrinement of the right to the free exercise of religion in the United States Constitution and the Constitution of Maine and case law of the Maine Supreme Judicial Court and the United States Supreme Court interpreting the fundamental and unalienable right to the free exercise of religion, as well as the extent to which a legislative body can legislate in this area.

The Preservation of Religious Freedom Act has as its purpose the restoration of the compelling interest test as set forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963). The Act guarantees the application of the compelling interest test in all cases in which the government substantially burdens the exercise of religion and provides a claim or defense to a person whose exercise of religion is burdened by the

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government.

The Act provides that the government may not directly or indirectly substantially burden a person's exercise of religion unless the application of the burden to the person is in furtherance of a compelling governmental interest and is accomplished through the least restrictive means. The Act allows a person whose exercise of religion has been substantially burdened in violation of the Act to assert the violation as a claim or defense in a court action.

The Act's requirement that the government's infringement upon the free exercise of religion be justified by a compelling interest is similar to the requirement placed on the Federal Government through the Religious Freedom Restoration Act of 1993 and that of other states that have passed similar protections.

LD 1342 An Act To Prohibit Unauthorized Custody Transfers of Children

PUBLIC 274

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HICKMAN VOLK	OTP-AM	H-410

This bill addresses the practice of rehomeing children by creating a new crime prohibiting the transfer of the long-term care and custody of a child without a court order. The new crime is described as a parent, guardian or other person legally charged with the long-term care and custody of a child under 16 years of age, or a person to whom the long-term care and custody of a child under 16 years of age has been expressly delegated, transferring the long-term care and custody of the child to another person who is not a family member without authorization by order of a court that has jurisdiction over the child. This is a Class C crime.

Committee Amendment "A" (H-410)

This amendment deletes from the bill the proposed new crime of unlawful transfer of long-term care and custody of a child and replaces it with amendments to the existing crime of abandonment of a child, prohibiting substantially the same conduct. This amendment adds to the crime of abandonment of a child a prohibition on placing a child with or transferring the physical custody of a child to a nonrelative without court approval. If the child is less than six years of age, the crime is a Class C crime and if the child is less than 18 years of age, the crime is a Class D crime. This amendment creates an affirmative defense that the placement or transfer of custody of the child is due to the incarceration, military service, medical treatment or incapacity of the person and is temporary and for a designated short-term period with a specific intent and time period for the return of the child.

This amendment clarifies that a person is prohibited from advertising for the purpose of finding a person to take into permanent custody a particular child; current law provides that a person is prohibited from advertising for the purpose of finding a person to adopt a child. This amendment removes from the provision in the bill prohibiting advertising the prohibition on publication and reduces the penalty for advertising to a maximum of \$5,000. The bill provides an exemption from the advertising prohibitions for the Department of Health and Human Services and licensed child-placing agencies, as well as attorneys advertising their availability to provide legal services relating to adoption.

Enacted Law Summary

Public Law 2015, chapter 274 amends the existing crime of abandonment of a child to prohibit the transfer of the long-term care and custody of a child without a court order. It also adds to the crime of abandonment of a child a prohibition on placing a child with or transferring the physical custody of a child to a nonrelative without court approval. If the child is less than six years of age, the crime is a Class C crime and if the child is less than 18 years of age, the crime is a Class D crime. Chapter 274 creates an affirmative defense that the placement or transfer of custody of the child is due to the incarceration, military service, medical treatment or incapacity of the person and is temporary and for a designated short-term period with a specific intent and time period for the return of the child.