

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
128<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION



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

**JOINT STANDING COMMITTEE ON JUDICIARY**

August 2017

**STAFF:**

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST  
JANET STOCCO, LEGISLATIVE ANALYST  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670  
<http://legislature.maine.gov/legis/opla/>

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# STATE OF MAINE

128<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* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 128<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. 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 128<sup>th</sup> Legislature is Wednesday, November 1, 2017. 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 327      An Act To Allow a Wrongful Death Cause of Action for the Death of a Viable Fetus**

**Died Between Houses**

Sponsor(s)

ESPLING E  
VOLK A

Committee Report

ONTP  
OTP

Amendments Adopted

This bill provides for a cause of action for the wrongful death of an unborn viable fetus. The bill specifies that such an action must be brought in Probate Court. The bill provides that an unborn viable fetus is a fetus that has reached 24 or more weeks of gestation.

The bill specifies that a cause of action for the wrongful death of an unborn viable fetus does not exist:

1. Against the mother;
2. Against a health care practitioner or health care provider performing an abortion permitted by law and for which required consent was given; or
3. Against a health care practitioner or health care provider if the health care practitioner or health care provider did not know of the pregnancy and, under the applicable standard of care, had no medical reason to know of the pregnancy.

**Senate Amendment "A" (S-316)**

This amendment specifies that:

1. The estate of an unborn viable fetus may be opened for two years after the death of the unborn viable fetus for the sole purpose of appointing a personal representative to pursue an action for wrongful death; and
2. The provision for a cause of action for the wrongful death of an unborn viable fetus does not create any other cause of action or claim or status regarding the unborn viable fetus.

This amendment was not adopted.

**LD 331      An Act To Correct the Maine Uniform Trust Code Concerning Certain Beneficiaries**

**PUBLIC 39**

Sponsor(s)

Committee Report

Amendments Adopted

OTP

This bill is a recommendation of the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-A, section 1-803, subsection 2.

The bill addresses the rights of a charitable organization to enforce a trust of which it is a beneficiary. The Maine Revised Statutes, Title 18-B, section 110 provides that a charitable organization is considered a qualified beneficiary of the trust if it would be considered a distributee or permissible distributee of trust income or principal in three different situations. One situation is whether the charitable organization would be a distributee or permissible distributee on the date the status is being determined, without providing additional criteria. That provision of current law is inconsistent with the Uniform Trust Code approved by the Uniform Law Commissioners. The

## *Joint Standing Committee on Judiciary*

Uniform Trust Code provides that a charitable organization is a qualified beneficiary if it would be a distributee or permissible distributee of the trust if the trust were to terminate on that date. This bill amends the current law to be consistent with the Uniform Trust Code, making it clear that the determination is based on whether the charitable organization would be a distributee or permissible distributee if the trust were to terminate on the date that the beneficiary status determination is being made.

### **Enacted Law Summary**

Public Law 2017, chapter 39 implements a recommendation of the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-A, section 1-803, subsection 2. Chapter 39 addresses the rights of a charitable organization to enforce a trust of which it is a beneficiary by clarifying that determination of whether the charitable organization would be a distributee or permissible distributee is made based on its status if the trust were to terminate on the date the determination is being made.

**LD 348      An Act To Increase Consumer Protection for Time-share Owners** **Accepted Majority (ONTP) Report**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CHENETTE J	ONTP OTP	

This bill amends the law governing time shares in the following ways.

1. It grants a person who purchases a time share from a developer the right to sell the time share back to the developer at fair market value after expiration of the sale cancellation period.
2. It prohibits the developer or an entity wholly or partially owned by the developer from serving as the manager of the time-share project.
3. It limits the liability of a time-share owner for assessments levied against the time-share unit for maintenance, taxes or fines to the fair market value of the time share.

**LD 362      An Act To Allow Relative Caregivers Standing in Court** **ONTP**

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

This bill specifies that a relative caregiver involved in a child protection proceeding has an unconditional right to intervene and to obtain the rights of a party in the proceeding.

**LD 363      An Act To Make a Child Living with a Custodial Relative Caregiver Eligible for State-paid Legal Services** **ONTP**

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

This bill provides that a child who is the subject of a child protection proceeding and who is living with a relative has a right to legal counsel at state expense during the child protection proceeding.