

# 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

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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/>

# 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 698      An Act To Allow Persons 70 Years of Age and Older To Opt Out of Jury Duty      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STANLEY S LIBBY N	ONTP	

This bill allows persons 70 years of age and older to opt out of jury service.

**LD 731      An Act To Require Mortgage Servicers To Act in Good Faith in Dealings with Homeowners      Veto Sustained**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CARPENTER M	OTP-AM	S-229

This bill requires servicers of residential mortgage loans to act in good faith when dealing with homeowners who are borrowers under those loans. The bill also makes changes in the foreclosure mediation process providing that, if courts have previously sanctioned the conduct of a mortgage servicer in a foreclosure process, the courts are authorized to directly sanction the mortgage servicer if the mortgage servicer's conduct evidences a failure to mediate in good faith. The bill requires the collection of data on sanctions imposed to provide that, when a mortgage servicer is found to have failed to act in good faith, the court may take into account previous conduct in determining a sanction sufficient to deter such conduct in the same case or future cases.

**Committee Amendment "A" (S-229)**

This amendment replaces the bill. It imposes the duty to act in good faith and with fair dealing and consistently with specified standards of care on any person who services a consumer credit transaction that is made to finance or refinance the acquisition of real estate or the initial construction of a dwelling or that is secured by a first-lien mortgage on real estate. This amendment specifies that the duties and standards of care may not be waived or modified.

This amendment allows an aggrieved consumer to recover all damages or an amount determined by the court not less than \$250 nor more than \$2,000. Under current law, an aggrieved consumer may recover no more than \$1,000. The amendment provides that the court may, in addition to awarding actual damages, award a homeowner or borrower under the Maine Consumer Credit Code statutory damages not to exceed \$15,000 if the creditor, assignee or servicer engaged in a pattern or practice of violating the duties and standards of care.

**LD 771      An Act To Protect Political Speech and Prevent Climate Change Policy Profiling      Accepted Majority (ONTP) Report**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
LOCKMAN L	ONTP OTP	

This bill reinforces the recognition that political speech is deserving of the greatest protection from abridgment by the government. The United States Supreme Court in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), continued the protection of protected political speech, no matter the source or message. This bill provides explicit legislative findings to reinforce the United States Supreme Court decision and to clearly state the

## Joint Standing Committee on Judiciary

need for statutory protections of protected political speech.

The bill specifically prohibits the Attorney General from investigating, joining an investigation initiated by another state or the Federal Government or prosecuting any person based on that person's protected political speech. It also prohibits the Attorney General from using the Attorney General's prosecutorial power to favor or disfavor protected political speech.

The bill also prohibits the State from favoring or disfavoring any person based on the person's climate change policy preferences with regard to grants, contracts or employment.

### **LD 773      An Act To Enact the Uniform Real Property Transfer on Death Act      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MALABY R	ONTP	

This bill enacts the Uniform Real Property Transfer on Death Act, adopted by the Uniform Law Commission in 2009. See also LD 969.

### **LD 807      An Act Regarding Guardianships      PUBLIC 187**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
KEIM L MOONEN M	OTP	

This bill changes the law regarding the evidentiary standard for the appointment of a guardian for an unmarried minor.

#### **Enacted Law Summary**

Public Law 2017, chapter 187 changes, pursuant to the Law Court decision in *Guardianship of Sebastien Chamberlain et al.*, 2015 ME 76, the law regarding the appointment of a guardian for an unmarried minor. Under the current law, the probate court may appoint a guardian without the consent of the minor's parents whose rights have not been terminated or the minor's legal custodian when the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian. Chapter 187 changes the evidentiary standard from a preponderance of the evidence to clear and convincing evidence.

### **LD 815      An Act To Allow a Council of Governments To Provide Municipal Services to Small Towns under the Maine Tort Claims Act      ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
WHITTEMORE R FOLEY R	ONTP	

This bill expressly authorizes a council of governments to provide municipal services to a municipality pursuant to a contract between the council of governments and the municipality. The bill amends the Maine Tort Claims Act to include in the definition of "political subdivision" a council of governments when it is providing municipal services pursuant to a contract between the council of governments and the municipality.