

MAINE STATE LEGISLATURE

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STATE OF MAINE
129TH LEGISLATURE
FIRST REGULAR SESSION



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

JOINT STANDING COMMITTEE ON JUDICIARY

August 2019

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STATE OF MAINE

129TH LEGISLATURE
FIRST 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 First Regular Session of the 129th 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 129th Legislature is Thursday, September 19, 2019. 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

Part C of the amendment amends the Freedom of Access Act to require the joint standing committee of the Legislature having jurisdiction over judiciary matters to conduct a review of any proposed statutory authorization of remote participation or change in accessibility with respect to public proceedings.

This amendment was not adopted.

LD 1516 An Act To Improve Efficiency in Communication in the Court System

PUBLIC 497

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MOONEN M SANBORN L	OTP-AM	H-270 S-344 BREEN C

This bill provides funding to the Judicial Branch to allow it to develop and implement a text message notification system to provide information regarding pending court cases, such as location, calendar, case category and case type, to involved parties.

Committee Amendment "A" (H-270)

This amendment removes the emergency preamble and emergency clause and reduces the appropriation to reflect the new effective date.

Senate Amendment "A" To Committee Amendment "A" (S-344)

This amendment replaces the appropriations and allocations section. It provides funding for one part-time Project Manager Associate position instead of one full-time position.

Enacted Law Summary

Public Law 2019, chapter 497, provides funding to the Judicial Branch to allow it to develop and implement a text message notification system to provide information regarding pending court cases, such as location, calendar, case category and case type, to involved parties. It provides funding for one part-time Project Manager Associate position.

LD 1522 An Act To Amend the Laws Regarding Orders of Abandonment for Residential Properties in Foreclosure

ONTP

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

This bill allows a condominium association to act as a party in interest in a judicial foreclosure action to present evidence of abandonment of mortgaged premises and file a motion to determine that the premises are abandoned. This bill also requires a plaintiff prevailing in a foreclosure action against premises that include dwelling units occupied by tenants to pay any rent received from those tenants, after deducting reasonable costs for acting as the landlord, to a condominium association that is a party in interest.

LD 1535 An Act To Correct Errors and Inconsistencies Related to the Maine Uniform Probate Code and To Make Other Substantive Changes

**PUBLIC 417
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-632

Joint Standing Committee on Judiciary

This bill is submitted pursuant to Public Law 2017, chapter 402, Part G, section 2.

This bill contains recommendations submitted by the Probate and Trust Law Advisory Commission and the Family Law Advisory Commission to Changes the Maine Uniform Probate Code. This bill does the following.

1. It provides that a guardian or conservator can petition the court to require a third party to recognize the authority of the guardian or conservator, as well as accept a decision of the guardian or conservator. If the court finds that the refusal of a third party was made in bad faith and without justification, the court may charge the third party for attorney's fees and costs. Notice of the petition for an order to recognize the authority or accept the decision of the guardian or conservator must be provided to the adult subject to guardianship or conservatorship and everyone else entitled to notice.
2. It addresses an inconsistency and a potential constitutional infirmity in the minor guardianship termination provision in Title 18-C, section 5-210, subsection 7 identified by the Family Law Advisory Commission. Subsection 7 establishes the standards and burdens of proof applicable to a parent's petition to terminate a minor guardianship when the termination is opposed by the guardian. This bill provides that the guardian has the burden of proving by clear and convincing evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor.
3. It requires the court, in determining whether to appoint a guardian or conservator, to find that any appropriate supportive services, technological assistance or supportive decision making provides adequate protection for the particular respondent. It adds that a less restrictive alternative to guardianship or conservatorship must provide adequate protection for the respondent.
4. It provides that if the respondent exercises the right to decline to participate in a professional evaluation or refuses to provide medical reports, the court may enter an order of guardianship or other protective arrangement if the court otherwise finds that there is a basis for the order.
5. Throughout Article 5, Parts 3, 4 and 5, it provides that participation in a hearing by telephone, rather than real-time audiovisual technology, is permitted only if real-time audiovisual technology is not available.
6. In the provisions governing confidentiality of records regarding adult guardianship, conservatorship and other protective arrangements, it establishes an effective date of January 1, 2021 to provide sufficient time for the Supreme Judicial Court to adopt rules governing the confidentiality of all court records.
7. It provides that the right to vote and the right marry are automatically preserved when a guardian is appointed, unless the court orders otherwise.
8. It creates an exception, for guardianships and conservatorships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain duties of notice and restrictions of powers until an express order of the court so directs the guardian.
9. It repeals Title 18-C, section 5-404, which was carried over from the former Title 18-A, section 5-404, and enacts Title 18-C, section 5-404-A. Section 5-404-A is derived from section 404 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and concerns an order to preserve property while a petition for appointment of a conservator is pending.
10. It provides that if the respondent exercises the right to decline to participate in a professional evaluation or refuses to provide medical reports, the court may enter an order of conservatorship or other protective arrangement if the court otherwise finds that there is a basis for the order.
11. It directs the Family Law Advisory Commission to study and provide recommendations on the following

Joint Standing Committee on Judiciary

matters related to the Maine Uniform Probate Code: petitions for termination of parental rights in the context of adoption; competing adoption petitions; and rights of contact between a minor and the former guardian when the guardianship is terminated. The Family Law Advisory Commission is required to submit a report, including specific recommendations for amendments to the Maine Uniform Probate Code and other family law statutes, to the Joint Standing Committee on Judiciary by December 1, 2019.

12. It enacts as new Article 10 the Maine Revised Uniform Fiduciary Access to Digital Assets Act, originally enacted by Public Law 2017, chapter 359, which was enacted as Article 10 of former Title 18-A.

Committee Amendment "A" (H-632)

This amendment changes the effective date of the Maine Uniform Probate Code, the Maine Revised Statutes, Title 18-C, enacted by Public Law 2017, chapter 402, from July 1, 2019 to September 1, 2019.

This amendment amends the adult guardianship, conservatorship and other protective arrangements provisions to clarify that the court retains its discretion when determining whether guardianship, conservatorship, protective arrangements or other less restrictive alternatives, including supported decision making, are appropriate in each case before the court. The court may consider any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent when a petition has been filed for guardianship, conservatorship or other protective arrangements.

This amendment updates Title 18-C with amendments that were included in the Maine Revised Uniform Fiduciary Access to Digital Assets Act, enacted by Public Law 2017, chapter 359 as amendments to the Maine Revised Statutes, Title 18-A, in the definition of "property" to include digital assets and to authorize an agent under a power of attorney to exercise authority over the content of an electronic communication of the principal if specifically authorized to do so in a power of attorney.

This amendment clarifies that a person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if the guardian's or conservator's proposed action would be inconsistent with not only the Maine Uniform Probate Code but any other law, rule or regulation. It also provides that a person who refuses to accept the authority of the guardian or conservator in any situation is required to report the refusal and the reason for the refusal to the court. This gives the court the opportunity to review the guardian or conservator and determine if removal or other action is appropriate.

This amendment replaces the provisions governing the appointment of a guardian for a minor on an emergency basis and is based on recommendations from the Family Law Advisory Commission. The amendment to the Title 18-C, section 5-204 permits the appointment of a guardian for a minor on an emergency basis for up to 90 days upon evidence that the appointment is needed to prevent substantial harm to the minor's physical health or safety.

This amendment provides that a professional evaluation is not required before the appointment of an emergency guardian or emergency conservator if the court finds from affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.

This amendment deletes the repeal of 18-C, section 5-404 as proposed in the bill and instead adds the proposed language concerning the preservation and protection of property pending a conservatorship proceeding.

This amendment provides that when the court has appointed a public guardian, no coguardian may be appointed, and no coconservator may be appointed when a public conservator has been appointed.

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This amendment cross-references the requirements that apply to private guardians and conservators to ensure that the same requirements apply to public guardians and conservators.

This amendment resolves an inconsistency in the adoptions laws between Title 18-C, section 9-202, subsection 4, which allows a parent to have five days to revoke a written consent to an adoption or a surrender and release of their parental rights, and subsection 6, which states that a consent or surrender and release are final and irrevocable upon execution. This amendment eliminates this inconsistency by eliminating "when duly executed" and in its place providing that a surrender and release or a consent is final and irrevocable upon the court's approval pursuant to the other requirements of that section, as set forth in subsection 2.

Enacted Law Summary

Public Law 2019, chapter 417, is based on recommendations from the Probate and Trust Law Advisory Commission and the Family Law Advisory Commission pursuant to Public Law 2017, chapter 402, Part G.

Public Law 2019, chapter 417 includes the following changes.

1. It changes the effective date of the Maine Uniform Probate Code, Title 18-C, from July 1, 2019 to September 1, 2019.
2. It provides that a guardian or conservator can petition the court to require a third party to recognize the authority of the guardian or conservator, as well as accept a decision of the guardian or conservator. If the court finds that the refusal of a third party was made in bad faith and without justification, the court may charge the third party for attorney's fees and costs. Notice of the petition for an order to recognize the authority or accept the decision of the guardian or conservator must be provided to the adult subject to guardianship or conservatorship and everyone else entitled to notice. Chapter 417 clarifies that a person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if the guardian's or conservator's proposed action would be inconsistent with not only the Maine Uniform Probate Code but any other law, rule or regulation. It also provides that a person who refuses to accept the authority of the guardian or conservator in any situation is required to report the refusal and the reason for the refusal to the court. This gives the court the opportunity to review the guardian or conservator and determine if removal or other action is appropriate.
3. It replaces the provisions governing the appointment of a guardian for a minor on an emergency basis and is based on recommendations from the Family Law Advisory Commission. The change to the Title 18-C, section 5-204 permits the appointment of a guardian for a minor on an emergency basis for up to 90 days upon evidence that the appointment is needed to prevent substantial harm to the minor's physical health or safety.
4. It addresses an inconsistency and a potential constitutional infirmity in the minor guardianship termination provision in Title 18-C, section 5-210, subsection 7 identified by the Family Law Advisory Commission. Subsection 7 establishes the standards and burdens of proof applicable to a parent's petition to terminate a minor guardianship when the termination is opposed by the guardian. This bill provides that the guardian has the burden of proving by clear and convincing evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor.
5. It requires the court, in determining whether to appoint a guardian or conservator, to find that any appropriate supportive services, technological assistance or supportive decision making provides adequate protection for the particular respondent. It adds that a less restrictive alternative to guardianship or conservatorship must provide adequate protection for the respondent. Chapter 417 amends the adult guardianship, conservatorship and other protective arrangements provisions to clarify that the court retains its discretion when determining whether guardianship, conservatorship, protective arrangements or other less restrictive alternatives, including supported decision making, are appropriate in each case before the court. The court may consider any proposed vetting of the

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person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent when a petition has been filed for guardianship, conservatorship or other protective arrangements.

6. It provides that if the respondent exercises the right to decline to participate in a professional evaluation or refuses to provide medical reports, the court may enter an order of guardianship or other protective arrangement if the court otherwise finds that there is a basis for the order.

7. It provides that a professional evaluation is not required before the appointment of an emergency guardian or emergency conservator if the court finds from affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.

8. Throughout Article 5, Parts 3, 4 and 5, it provides that participation in a hearing by telephone, rather than real-time audiovisual technology, is permitted only if real-time audiovisual technology is not available.

9. In the provisions governing confidentiality of records regarding adult guardianship, conservatorship and other protective arrangements, it establishes an effective date of January 1, 2021 to provide sufficient time for the Supreme Judicial Court to adopt rules governing the confidentiality of all court records.

10. It provides that the right to vote and the right marry are automatically preserved when a guardian is appointed, unless the court orders otherwise.

11. It provides that when the court has appointed a public guardian, no coguardian may be appointed, and no coconservator may be appointed when a public conservator has been appointed. It also cross-references the requirements that apply to private guardians and conservators to ensure that the same requirements apply to public guardians and conservators.

12. It creates an exception, for guardianships and conservatorships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain duties of notice and restrictions of powers until an express order of the court so directs the guardian.

13. It repeals Title 18-C, section 5-404, which was carried over from the former Title 18-A, section 5-404, and enacts Title 18-C, section 5-404-A. Section 5-404-A is derived from section 404 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and concerns an order to preserve property while a petition for appointment of a conservator is pending.

14. It provides that if the respondent exercises the right to decline to participate in a professional evaluation or refuses to provide medical reports, the court may enter an order of conservatorship or other protective arrangement if the court otherwise finds that there is a basis for the order.

15. It resolves an inconsistency in the adoptions laws concerning the effective date of a written consent to an adoption or a surrender and release of parental rights.

16. It directs the Family Law Advisory Commission to study and provide recommendations on the following matters related to the Maine Uniform Probate Code: petitions for termination of parental rights in the context of adoption; competing adoption petitions; and rights of contact between a minor and the former guardian when the guardianship is terminated. The Family Law Advisory Commission is required to submit a report, including specific recommendations for amendments to the Maine Uniform Probate Code and other family law statutes, to the Joint Standing Committee on Judiciary by December 1, 2019.

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17. It enacts as new Article 10 the Maine Revised Uniform Fiduciary Access to Digital Assets Act, originally enacted by Public Law 2017, chapter 359, which was enacted as Article 10 of former Title 18-A.

Public Law 2019, chapter 417, was enacted as an emergency measure effective June 20, 2019.

LD 1544 An Act To Enact the Maine Revised Unclaimed Property Act

PUBLIC 498

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
KEIM L	OTP-AM OTP-AM	S-351

This bill repeals Maine's Uniform Unclaimed Property Act and enacts the Maine Revised Unclaimed Property Act. The bill also corrects cross-references.

Committee Amendment "A" (S-351)

This amendment includes the definition of "game-related digital content" from the Revised Uniform Unclaimed Property Act, or Uniform Act, and, consistent with the Uniform Act, exempts it from the definition of property that is subject to the Maine Revised Unclaimed Property Act and excludes it from the definition of "stored-value obligation."

This amendment revises the definition of "owner" to include a creditor.

This amendment amends the provision governing the presumption of abandonment for a payroll card or demand, savings or time deposit to track the language of the Uniform Act to provide that the property is presumed abandoned three years after the maturity of the deposit, deleting the reference to the last indication of interest by the owner.

This amendment provides that the date on which the dormancy period begins to run is the date an insurance company has knowledge of the death of an insured, rather than the date of death as provided in the bill.

The bill provides that a stored-value card is presumed abandoned two years after key events have occurred; this amendment changes that time period to three years.

This amendment removes from the bill language providing that a security is presumed abandoned two years after the date of death of the owner.

This amendment revises the bill to provide that automatic withdrawals previously authorized and automatic reinvestments of dividends and interest are included as an indication of an apparent owner's interest in the property.

This amendment provides that interest on interest-bearing property that has been delivered to the administrator is not payable to the owner for any period before the effective date of the Maine Revised Unclaimed Property Act, unless the prior law authorized such payments. This provision is included in the Uniform Act.

This amendment provides that the administrator may not commence an action or proceeding to enforce the Maine Revised Unclaimed Property Act with respect to the reporting, payment or delivery of property more than five years after the holder filed a nonfraudulent report with the administrator. The parties may agree in a record to extend the limitation. In addition, the administrator may not commence an action, proceeding or examination with respect to a duty of a holder under the Maine Revised Unclaimed Property Act more than 10 years after the duty arose.

This amendment strikes out subchapter 13 in the bill and replaces it with the language of the current Maine Revised Statutes, Title 33, section 1976 with regard to agreements to locate property. This amendment provides that if a