

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

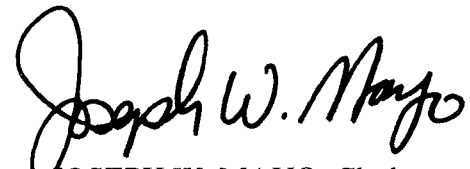
No. 1593

Initiated Bill 1

House of Representatives, March 2, 1999

An Act to Ban Partial Birth Abortion.

Transmitted to the Clerk of the 119th Maine Legislature by the Secretary of State on February 22, 1999 and ordered printed.


JOSEPH W. MAYO, Clerk

Be it enacted by the People of the State of Maine as follows:

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4 Sec. 1. 22 MRSA §1597-B is enacted to read:

6 §1597-B. Partial-birth abortions prohibited

8 1. Definitions. As used in this section the following terms have the following meanings.

10 A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or by the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus.

12 B. "Partial-birth abortion" means an abortion in which the physician performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

14 C. "Partially vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion of a living fetus, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus.

16 2. Partial-birth abortions prohibited; exception. A physician may not knowingly perform a partial-birth abortion and thereby kill a human fetus. This prohibition does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness or injury.

18 3. Criminal liability. A physician who violates this section:

20 A. Commits a Class D crime; and

22 B. Is subject to damages awarded in a civil action under subsection 4.

24 4. Civil action. The father, if married to the mother at the time she receives the partial-birth abortion procedure, and the maternal grandparents of the fetus, if the mother has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. Appropriate relief shall include:

2 A. Money damages for all injuries, psychological and
4 physical, occasioned by the violation of this section; and

6 B. Statutory damages equal to 3 times the cost of the
8 partial-birth abortion.

10 5. Hearing. A physician accused of an offense under this
12 section may seek a hearing before the Board of Licensure in
14 Medicine or the Board of Osteopathic Licensure, as applicable, on
16 whether the physician's conduct was necessary to save the life of
 the mother whose life was endangered by a physical disorder,
 illness or injury. The findings on that issue are admissible on
 that issue at the trial of the physician. Upon a motion of the
 physician, the court shall delay the beginning of the trial for
 not more than 30 days to permit such a hearing to take place.

18 6. Immunity. A woman upon whom a partial-birth abortion is
20 performed may not be prosecuted under this section for a
22 conspiracy to violate this section or for an offense under
 section 1597-A or 1598 based on a violation of this section.

24 **Sec. 2. 22 MRSA §1598, sub-§1, as amended by PL 1993, c. 61,**
 §2, is further amended to read:

26 **1. Policy.** It is the public policy of the State that the
28 State not restrict a woman's exercise of her private decision to
30 terminate a pregnancy before viability except as provided in
32 section 1597-A. After viability an abortion may be performed
34 only when it is necessary to preserve the life or health of the
 mother or, in the case of a partial-birth abortion, when
 permitted under section 1597-B, subsection 2. It is also the
 public policy of the State that all abortions may be performed
 only by a physician.

36 **Sec. 3. 22 MRSA §1598, sub-§4, as enacted by PL 1979, c. 405,**
38 **§2, is amended to read:**

40 **4. Abortions after viability; criminal liability.** A Except
42 as provided in section 1597-B, a person who performs an abortion
 after viability is guilty of a Class D crime if:

44 A. He That person knowingly disregarded the viability of
 the fetus; and

46 B. He That person knew that the abortion was not necessary
48 for the preservation of the life or health of the mother.

SUMMARY

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4 This initiated bill prohibits partial-birth abortions except
6 when such an abortion is necessary to save the life of the
8 mother. Performance of a partial-birth abortion in violation of
the provisions of this initiated bill is a Class D crime. In
addition, the physician performing the abortion is subject to
damages in a civil suit. The mother may not be prosecuted.