

# MAINE STATE LEGISLATURE

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L.D. 387

(Filing No. H-409)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
112TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "**B**" to H.P. 298, L.D. 387,  
Bill, "AN ACT to Require Parental Consent in the Case  
of Minors' Abortions."

Amend the bill by striking out everything after  
the enacting clause and inserting in its place the  
following:

'Sec. 1. 4 MRSA §152, sub-§4, as repealed and  
replaced by PL 1983, c. 796, §1, is amended to read:

4. Exclusive jurisdiction. Original jurisdic-  
tion, not concurrent with that of the Superior Court,  
of mental health commitment hearings under Title 34,  
chapter 229, mental retardation certification hear-  
ings under Title 34, chapter 229 ~~and~~, small claims  
actions under Title 14, chapter 738 and actions seek-  
ing judicial consent to a minor's abortion under Ti-  
tle 22, section 1597-A; and

Sec. 2. 22 MRSA §1597, as enacted by PL 1979, c.  
413, is repealed.

Sec. 3. 22 MRSA §1597-A is enacted to read:

§1597-A. Parental or court consent required prior to  
performing an abortion on a minor

1. Definitions. As used in this section, unless  
the context otherwise indicates, the following terms  
have the following meanings.

A. "Emancipated" means, but is not limited to,  
married, serving in the Armed Forces or emanci-  
pated under Title 15, section 3506-A.

2. Prohibition; exceptions. Unless otherwise

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1 provided by law, no person may knowingly perform an  
2 abortion upon a pregnant woman under the age of eigh-  
3 teen years unless:

4 A. The attending physician has secured the in-  
5 formed written consent of the minor and one par-  
6 ent or guardian;

7 B. The minor is emancipated and the attending  
8 physician has received the informed written con-  
9 sent of the minor;

10 C. The minor has been granted the right to  
11 self-consent to the abortion by court order pur-  
12 suant to subsection 3 and the attending physician  
13 has received the informed written consent of the  
14 minor;

15 D. The minor has been granted consent to the  
16 abortion by court order and the court has given  
17 its informed written consent in accordance with  
18 subsection 3 and the minor is having the abortion  
19 in compliance with subsection 4; or

20 E. The attending physician determines that the  
21 abortion is immediately necessary to preserve the  
22 life of the minor.

23 3. Minor's right to self-consent. The right of  
24 a minor to self-consent to an abortion under subsec-  
25 tion 2, paragraph C, or court consent under subsec-  
26 tion 2, paragraph D, may be granted by a court pursu-  
27 ant to the following procedures.

28 A. The minor or next friend of the minor shall  
29 make an application to the District Court which  
30 shall assist the minor or next friend in prepar-  
31 ing the petition required pursuant to this sec-  
32 tion. The minor or next friend shall file a pe-  
33 tition setting forth the initials of the minor,  
34 the age of the minor; that the minor has been  
35 fully informed of the risks and consequences of

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1           the abortion; that the minor is of sound mind and  
2           has sufficient intellectual capacity to consent  
3           to the abortion; that, if the court does not  
4           grant the minor majority rights for the purpose  
5           of consent to the abortion, the court should find  
6           that the abortion is in the best interest of the  
7           minor and give judicial consent to the abortion;  
8           that the court should appoint a guardian ad litem  
9           of the child; and, if the minor does not have  
10           private counsel, that the court should appoint  
11           counsel. The petition shall be initialed by the  
12           minor or signed by the next friend of the minor.  
13           The petition is a confidential record.

14           B. A hearing on the merits of the petition, to  
15           be held on the record, shall be held as soon as  
16           possible within 5 days of the filing of the peti-  
17           tion. The general public shall be excluded from  
18           the hearing and only those court officers or per-  
19           sonnel necessary to the conduct of the hearing  
20           may be present at the hearing. All records of or  
21           records presented at the hearing are confiden-  
22           tial. If any party is unable to afford counsel,  
23           the court shall appoint counsel at least 24 hours  
24           before the time of the hearing. At the hearing,  
25           the court shall hear evidence relating to the  
26           emotional development, maturity, intellect and  
27           understanding of the minor; the nature, possible  
28           consequences and alternatives to the abortion;  
29           and any other evidence that the court may find  
30           useful in determining whether the minor should be  
31           granted majority rights for the purpose of con-  
32           senting to the abortion or whether the abortion  
33           is in the best interests of the minor.

34           C. In the decree, the court shall, for good  
35           cause:

36                   (1) Grant the petition for majority rights  
37                   for the purpose of consenting to the abor-  
38                   tion;

1           (2) If the court does not find that it can  
2           grant the petition under subparagraph (1),  
3           find the abortion to be in the best inter-  
4           ests of the minor and give judicial consent  
5           to the abortion, setting forth the grounds  
6           for so finding; or

7           (3) If the court does not find that it can  
8           grant the petition under subparagraph (1) or  
9           give judicial consent under subparagraph  
10           (2), deny the petition, setting forth the  
11           grounds on which the petition is denied.

12           D. If the petition is allowed, the informed con-  
13           sent of the minor, pursuant to a court grant of  
14           majority rights, or the judicial consent, shall  
15           bar an action by the parents or guardian of the  
16           minor on the grounds of battery of the minor by  
17           those performing the abortion. The immunity  
18           granted shall only extend to the performance of  
19           the abortion in accordance with this section and  
20           any necessary accompanying services which are  
21           performed in a competent manner.

22           E. An appeal from an order issued under this  
23           section may be taken to the Superior Court by the  
24           minor or the next friend of the minor who brought  
25           the petition. The notice of intent to appeal  
26           must be given within 24 hours from the date of  
27           issuance of the order. The record on appeal must  
28           be completed and the appeal must be perfected  
29           within 5 days from the filing of notice to ap-  
30           peal. Because time may be of the essence regard-  
31           ing the performance of the abortion, the Supreme  
32           Judicial Court of this State shall, by court  
33           rule, provide for expedited appellate review of  
34           cases appealed under this section.

35           4. Minor's consent. If a minor desires an abor-  
36           tion, then she shall be orally informed of and, if  
37           possible, sign the written consent required by sec-  
38           tion 1599-A in the same manner as an adult person.

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1           5. Penalty. Any person who knowingly performs or  
2 aids in the performance of an abortion in violation  
3 of this section or who knowingly fails to perform any  
4 action required by this section is guilty of a Class  
5 D crime.

6           Sec. 4. 22 MRSA §1599, as reallocated by PL  
7 1979, c. 663, §133, is repealed.

8           Sec. 5. 22 MRSA §1599-A is enacted to read:

9           §1599-A. Informed consent to abortion

10           1. Consent by the woman. No physician may per-  
11 form an abortion unless, prior to the performance,  
12 the attending physician certifies in writing that the  
13 woman gave her informed written consent, freely and  
14 without coercion. He shall further certify in writing  
15 the pregnant woman's age based upon proof of age of-  
16 fered by her.

17           2. Informed consent. In order to insure that the  
18 consent for an abortion is truly informed consent,  
19 the attending physician or his designee, with regard  
20 to paragraph D, shall inform the woman in a manner  
21 which, in his professional judgment, is not mislead-  
22 ing and which will be understood by the patient, of  
23 at least the following:

24           A. According to his best judgment she is preg-  
25 nant;

26           B. The number of weeks elapsed from the probable  
27 time of conception;

28           C. The particular risks associated with her own  
29 pregnancy and the abortion technique to be per-  
30 formed; and

31           D. Alternatives to abortion, such as childbirth  
32 and adoption and information concerning public



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1 which has been held unconstitutional.

2 Section 3 creates a judicial bypass procedure,  
3 similar to that established in Missouri, for a minor  
4 to petition a court for consent to her abortion when  
5 she does not have, or does not wish to seek, the con-  
6 sent of a parent or guardian.

7 Sections 4 and 5 create a revised version of the  
8 Maine Revised Statutes, Title 22, section 1599. Sec-  
9 tion 1599 was declared unconstitutional by the United  
10 States District Court for the District of Maine be-  
11 cause it required a waiting period between the time a  
12 woman sought an abortion and the time she could have  
13 the abortion and because it required nonmedical in-  
14 formation required for informed consent to abortion  
15 to be given by a physician. The enactment of the  
16 Maine Revised Statutes, Title 22, section 1599-A,  
17 corrects the constitutional deficiencies of section  
18 1599.

19 Section 6 provides for an appropriation.

20 Section 7 provides a January 1, 1986, effective  
21 date to give the Judicial Department time to ready  
22 itself to implement the procedure provided for in  
23 this amendment.

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Reported by Report "B" of the Committee on Judiciary  
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