

# MAINE STATE LEGISLATURE

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L.D. 387

(Filing No. H-410 )

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

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

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Amend the bill by striking out the title and in-  
serting in its place the following: 'AN ACT Pertain-  
ing to Parental or Court Consent Prior to Performing  
an Abortion on a Minor.'

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Further amend the bill by striking everything af-  
ter the enacting clause and inserting in its place  
the following:

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'Sec. 1. 4 MRSA §152, sub-§4, as repealed and  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

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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

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413, is repealed.

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

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

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

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1           A. "Emancipated" means, but is not limited to,  
2 married or emancipated under Title 15, section  
3 3506-A.

4           B. "Minor" means a pregnant woman under the age  
5 of 17 years.

6           2. Prohibition; exceptions. Unless otherwise  
7 provided by law, no person may knowingly perform an  
8 abortion upon a pregnant woman under the age of 17  
9 years unless:

10           A. The attending physician has secured the in-  
11 formed written consent of the minor and one par-  
12 ent or guardian;

13           B. The minor is emancipated and the attending  
14 physician has received the informed written con-  
15 sent of the minor;

16           C. The minor has been granted the right to  
17 self-consent to the abortion by court order pur-  
18 suant to subsection 3 and the attending physician  
19 has received the informed written consent of the  
20 minor;

21           D. The minor has been granted consent to the  
22 abortion by court order and the court has given  
23 its informed written consent in accordance with  
24 subsection 3 and the minor is having the abor-  
25 tion, in compliance with subsection 4; or

26           E. The attending physician determines that the  
27 abortion is immediately necessary to preserve the  
28 life of the minor.

29           3. Minor's right to self-consent. The right of a  
30 minor to self-consent to an abortion under subsection  
31 2, paragraph C, or court consent under subsection 2,  
32 paragraph D, may be granted by a court pursuant to  
33 the following procedures.

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1           A. The minor or next friend of the minor shall  
2 make an application to the District Court which  
3 shall assist the minor or next friend in prepar-  
4 ing the petition required pursuant to this sec-  
5 tion. The minor or next friend shall file a peti-  
6 tion setting forth the initials of the minor; the  
7 age of the minor; that the minor has been fully  
8 informed of the risks and consequences of the  
9 abortion; that the minor is of sound mind and has  
10 sufficient intellectual capacity to consent to  
11 the abortion; that, if the court does not grant  
12 the minor majority rights for the purpose of con-  
13 sent to the abortion, the court should find that  
14 the abortion is in the best interest of the minor  
15 and give judicial consent to the abortion; that  
16 the court should appoint a guardian ad litem of  
17 the minor, if the minor so requests; and, if the  
18 minor does not have private counsel, that the  
19 court should appoint counsel if the minor objects  
20 to the report of the master under paragraph B.  
21 The petition shall be initialed by the minor or  
22 signed by the next friend of the minor. The peti-  
23 tion is a confidential record.

24           B. The clerk of the District Court shall sched-  
25 ule a meeting for the minor at the minor's conve-  
26 nience with a master as near as possible to where  
27 the minor resides. The meeting must occur within  
28 3 days of the filing of the petition. The clerk  
29 shall transmit the petition to the master prior  
30 to the meeting. All records, communications and  
31 proceedings under this paragraph shall be kept  
32 confidential. The master shall be chosen from a  
33 list of qualified masters appointed by the court.  
34 A master shall be a psychiatrist, a licensed psy-  
35 chologist, a licensed clinical social worker or a  
36 certified social worker. A master shall be paid  
37 \$50 by the court for each petition on which a  
38 master holds a meeting with a minor. The master's  
39 action on a petition shall proceed as follows.

40           (1) The master shall meet the minor in a

1 meeting room provided by the master or in a  
2 meeting room provided by the court. A next  
3 friend of the minor or, if appointed, a  
4 guardian ad litem may attend the meeting  
5 with her. The meeting shall be conducted in-  
6 formally.

7 (2) The master shall solicit evidence from  
8 the minor relating to her emotional develop-  
9 ment, maturity, intellect and understanding;  
10 the nature and possible consequences of the  
11 abortion for the minor, and of alternatives  
12 to abortion for the minor; and any other ev-  
13 idence the master may find useful in deter-  
14 mining whether the minor should be granted  
15 the right to self-consent to the abortion or  
16 whether the abortion is in the best inter-  
17 ests of the minor.

18 (3) The master shall file a written report  
19 with the court within 2 days of meeting with  
20 the minor. The report shall be confidential  
21 except for disclosure to the court and the  
22 minor. The report shall state, with findings  
23 for divisions (a) and (b), the master's de-  
24 cision that the minor:

25 (a) Should be granted the right to  
26 self-consent to the abortion;

27 (b) Should not be granted the right to  
28 self-consent to the abortion, but  
29 should receive judicial consent to the  
30 abortion because the abortion is in her  
31 best interests; or

32 (c) Should have her petition denied.

33 The report shall include a statement by the  
34 master as to how the court may inform the  
35 minor as required by subparagraph (4).

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1                   (4) The court shall enter judgment on the  
2                   master's report immediately upon receiving  
3                   the report. The court may, as directed by  
4                   the Supreme Judicial Court as circumstances  
5                   necessitate, receive the report and enter  
6                   judgment on it by telephone. The court shall  
7                   immediately inform the minor, in a confiden-  
8                   tial manner, of the judgment and ask, if  
9                   judgment was entered on subparagraph (3),  
10                   division (c), if the minor wishes to object  
11                   to the judgment. If the minor objects to the  
12                   judgment, the court shall vacate the judg-  
13                   ment, appoint counsel for the minor within  
14                   24 hours if she requests or has requested  
15                   appointment of counsel and proceed to hold a  
16                   hearing under paragraph C.

17                   C. A hearing on the merits of the petition, to  
18                   be held on the record, shall be held as soon as  
19                   possible within 5 days of entry of judgment on  
20                   the master's report if the minor objects to the  
21                   report under paragraph B, subparagraph (4). At  
22                   the hearing, the court shall hear evidence relat-  
23                   ing to the emotional development, maturity, in-  
24                   tellect and understanding of the minor; the na-  
25                   ture, possible consequences and alternatives to  
26                   the abortion; and any other evidence that the  
27                   court may find useful in determining whether the  
28                   minor should be granted majority rights for the  
29                   purpose of consenting to the abortion or whether  
30                   the abortion is in the best interests of the mi-  
31                   nor. The master's report and testimony by the  
32                   master shall not be admissible in the hearing.

33                   D. In the decree after the hearing, the court  
34                   shall, for good cause:

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

38                   (2) If the court does not find that it can

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1                   grant the petition under subparagraph (1),  
2                   find the abortion to be in the best interest  
3                   of the minor and give judicial consent to  
4                   the abortion, setting forth the grounds for  
5                   so finding; or

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

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

21                   F. The Supreme Judicial Court shall promulgate  
22                   rules to provide for expedited appeals from a de-  
23                   creed under this subsection.

24                   G. All records created under this subsection,  
25                   shall be expunged on the date of the 18th birth-  
26                   day of the minor to whom the records pertain.

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

31                   5. Penalty. Any person who knowingly performs or  
32                   aids in the performance of an abortion in violation  
33                   of this section or who knowingly fails to perform any  
34                   action required by this section is guilty of a Class  
35                   D crime.

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1           Sec. 4. 22 MRSA §1599, as reallocated by PL  
2           1979, c. 663, §133, is repealed.

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

4           §1599-A. Informed consent to abortion

5           1. Consent by the woman. No physician may per-  
6           form an abortion unless, prior to the performance,  
7           the attending physician certifies in writing that the  
8           woman gave her informed written consent, freely and  
9           without coercion. He shall further certify in writing  
10           the pregnant woman's age based upon proof of age of-  
11           ferred by her.

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

19           A. According to his best judgment she is preg-  
20           nant;

21           B. The number of weeks elapsed from the probable  
22           time of the conception;

23           C. The particular risks associated with her own  
24           pregnancy and the abortion technique to be per-  
25           formed; and

26           D. Alternatives to abortion such as childbirth  
27           and adoption and information concerning public  
28           and private agencies that will provide the woman  
29           with economic and other assistance to carry the  
30           fetus to term, including, if the woman so re-  
31           quests, a list of these agencies and the services  
32           available from each.

33           Sec. 6. Appropriation. The following funds are



COMMITTEE AMENDMENT "e" to H.P. 298, L.D. 387

1 appropriated from the General Fund to carry out the  
2 purposes of this Act.

3 1985-86                      1986-87

4 JUDICIAL DEPARTMENT

5	Courts - Supreme, Superior,		
6	District and Administrative		
7	All Other	\$6,000	\$12,000
8	Provides funds		
9	for payments to		
10	court appointed		
11	masters and at-		
12	torneys in cases		
13	involving judi-		
14	cial consent to		
15	minors' abor-		
16	tions.		

17 Sec. 7. Effective date. This Act shall take ef-  
18 fect on January 1, 1986.'

19 STATEMENT OF FACT

20 The purpose of this amendment is to:

21 1. Limit the requirement of judicial consent to  
22 abortions for minors, where parental consent does not  
23 exist, to minors under the age of 17 years (Maine Re-  
24 vised Statutes, Title 22, section 1597-A).

25 2. Establish, through the use of specially qual-  
26 ified court masters, a less traumatic, more appropri-  
27 ate procedure for determining if a minor seeking ju-  
28 dicial consent to an abortion is mature enough to  
29 make the decision herself or, if she is not, if the  
30 abortion is nonetheless in her best interest (Maine  
31 Revised Statutes, Title 22, section 1597-A, subsec-  
32 tion 3, paragraph B).

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1           3. Permit the minor seeking judicial consent to  
2 an abortion access to a court hearing if she objects  
3 to the master's decision (Maine Revised Statutes, Title  
4 22, section 1597-A, subsection 3, paragraphs C  
5 and D).

6           4. Permit an attending physician to designate a  
7 person other than himself to perform the counseling  
8 function of the abortion informed consent statute, as  
9 required by City of Akron v. Akron Center for Repro-  
10 ductive Health, 103 S. Ct. 2481 (1983) (Maine Revised  
11 Statutes, Title 22, section 1599-A).

12           This amendment responds to the invitation to the  
13 states by the United States Supreme Court in Bellotti  
14 v. Baird, 99 S. Ct. 3035, 3048 (n. 22) (1979) to de-  
15 velop an alternative procedure to the judicial proce-  
16 dure reviewed in that case for involving the State in  
17 a minor's decision to have an abortion where parental  
18 consent is absent.

19

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