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House of Representatives, March 6, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

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EDWIN H. PERT, Clerk

Presented by Representative CARTER of Winslow. Cosponsored by Senator DUTREMBLE of York, Senator MATTHEWS of Kennebec and Senator COLLINS of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Require Parental Consent to a Minor's Abortion.

1	Be it enacted by the People of the State of Maine as follows:
3	22 MRSA §1597-A is enacted to read:
5	§1597-A. Consent to a minor's decision to have an abortion
7	1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the
9	following meanings.
11	A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether
13	chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to
15	remove a dead fetus.
17	<u>B. "Emancipated" means the person has surrendered the rights of a minor in relation to her parent's or guardian's</u>
19	<u>duties to her and that the parent or guardian has</u> surrendered the care, custody and earnings of the minor.
21	C. "Minor" means a person who is less than 18 years of age.
23	2. Abortions on minors prohibited; exceptions. No person
25	<u>may knowingly perform an abortion upon a pregnant woman under the age of 18 years unless:</u>
27 29	A. The attending physician has secured the informed written consent of the minor and one parent or guardian;
31 33	B. The minor is emancipated and the attending physician has received the informed written consent of the minor;
	C. The minor has been granted the right to self-consent to
35	<u>the abortion by court order pursuant to subsection 3 and the attending physician has received the informed written</u>
37	consent of the minor; or
39	<u>D. The minor has been granted consent to the abortion by court order, the court has given its informed written</u>
41	<u>consent in accordance with subsection 3 and the minor is</u> having the abortion willingly, in compliance with subsection
43	<u>4.</u>
45	3. Self-consent or court consent; procedure. The right of a minor to self-consent to an abortion under subsection 2,
47	paragraph C, or court consent under subsection 2, paragraph D, may be granted by a court pursuant to the following procedures.
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51	A. The minor or next friend shall make an application to the District Court which shall assist the minor or next friend in preparing the petition. The minor or the next

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1 friend of the minor shall thereafter file a petition setting forth the initials of the minor; the age of the minor; that the minor has been fully informed of the risks and 3 consequences of the abortion; that the minor is of sound 5 mind and has sufficient intellectual capacity to consent to the abortion; that, if the court does not grant the minor majority rights for the purpose of consent to the abortion, 7 the court should find that the abortion is in the best 9 interest of the minor and give judicial consent to the abortion; that the court should appoint a guardian ad litem of the child; and, if the minor does not have private 11 counsel, that the court should appoint counsel. The 13 petition shall be signed by the minor or the next friend.

B. A hearing on the merits of the petition, to be held on 15 the record, shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to 17 afford counsel, the court shall appoint counsel at least 24 19 hours before the time of the hearing. At the hearing, the court shall hear evidence relating to the emotional 21 development, maturity, intellect and understanding of the minor; the nature, possible consequences and alternatives to 23 the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the 25 abortion or whether the abortion is in the best interests of the minor. 27

- C. In the decree, the court shall for good cause:
- 31 (1) Grant the petition for majority rights for the purpose of consenting to the abortion;
 - (2) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or
- (3) Deny the petition only if the court finds that the39minor is not emancipated and is not mature enough to
make her own decision and that the abortion is not in41her best interest.
- D. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor
 by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner.

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1 E. The minor may appeal an order issued in accordance with this section to the Superior Court. The notice of appeal 3 shall be filed within 24 hours from the date of issuance of the order. The record on appeal shall be completed and the 5 appeal shall be perfected within 5 days from the filing of notice to appeal. Because time may be of the essence 7 regarding the performance of the abortion, the Supreme Judicial Court shall, by court rule, provide for expedited appellate review of cases appealed under this section. 9

11 4. Minor's informed consent; abortion performed against the minor's will. If a minor desires an abortion, then she shall be 13 orally informed of and, if possible, sign the written consent required by section 1599 in the same manner as an adult. No 15 abortion may be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in subsection 2, paragraph D, 17 that the abortion is necessary to preserve the life of the minor.

5. Violation. Any person who knowingly performs or aids in 21 the performance of an abortion in violation of this section or who knowingly fails to perform any action required by this section is guilty of a Class D crime.

STATEMENT OF FACT

This bill prohibits the performance of an abortion on a 29 minor except when the attending physician has obtained the informed written consent of the minor and one parent or quardian; 31 the minor is emancipated and the attending physician has obtained the minor's informed written consent; the minor has been granted 33 the right to self-consent to the abortion by court order and the attending physician has received the minor's informed written 35 consent; or the minor has been granted consent to the abortion by court order, the court has given its informed written consent and 37 the minor is willingly having the abortion. The bill further sets forth the procedures for the granting of court consent or a minor's right to self-consent to an abortion, including the 39 filing of a petition in District Court, a hearing on the merits 41 of the petition and provisions for appeal to the Superior Court by the minor. The bill also requires the Supreme Judicial Court 43 to provide, by court rule, for the expedited appellate review of cases involving the performance of an abortion on a minor. The 45 bill prohibits the performance of an abortion on a minor against her will, except by court order that the abortion is necessary to 47 preserve the minor's life. Finally, this bill provides that any person who knowingly performs or aids in the performance of an 49 abortion or fails to perform an action required by the provisions of this bill is guilty of a Class D crime.

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