

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 318

S.P. 117

In Senate, February 4, 1993

An Act to Protect Reproductive Privacy in Maine.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CAHILL of Sagadahoc. (GOVERNOR'S BILL).
Cosponsored by Senator CONLEY of Cumberland, Representative FARNSWORTH of
Hallowell and
Senators: AMERO of Cumberland, BALDACCI of Penobscot, BRANNIGAN of Cumberland,
BUSTIN of Kennebec, CARPENTER of York, CLEVELAND of Androscoggin, ESTY of
Cumberland, HARRIMAN of Cumberland, LAWRENCE of York, McCORMICK of Kennebec,
O'DEA of Penobscot, PINGREE of Knox, SUMMERS of Cumberland, TITCOMB of
Cumberland, VOSE of Washington, Representatives: ADAMS of Portland, AULT of Wayne,
BENNETT of Norway, BOWERS of Washington, BRENNAN of Portland, CAMERON of
Rumford, CARROLL of Gray, CATHCART of Orono, CHASE of China, COLES of Harpswell,
CONSTANTINE of Bar Harbor, COTE of Auburn, DORE of Auburn, FAIRCLOTH of Bangor,
FARNUM of South Berwick, FITZPATRICK of Durham, FOSS of Yarmouth, GEAN of Alfred,
GRAY of Sedgwick, GWADOSKY of Fairfield, HALE of Sanford, HOGLUND of Portland,
HOLT of Bath, JOHNSON of South Portland, KILKELLY of Wiscasset, KONTOS of
Windham, LIPMAN of Augusta, MITCHELL of Vassalboro, MORRISON of Bangor,
NORTON of Winthrop, OLIVER of Portland, OTT of York, PARADIS of Augusta,
PENDEXTER of Scarborough, PFEIFFER of Brunswick, RAND of Portland, RICHARDSON
of Portland, ROWE of Portland, RYDELL of Brunswick, SAXL of Bangor, SIMONDS of Cape
Elizabeth, STEVENS of Orono, TOWNSEND of Portland, TOWNSEND of Eastport, TRACY
of Rome, TREAT of Gardiner, WALKER of Blue Hill, WENTWORTH of Arundel, WINN of
Glenburn.

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

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4 Sec. 1. 22 MRSA §1597, as enacted by PL 1979, c. 413, is
repealed.

6 Sec. 2. 22 MRSA §1598, sub-§1, as enacted by PL 1979, c. 405,
8 §2, is amended to read:

10 1. Policy. It is the public policy of the State that an
12 ~~abortion~~after the State not restrict a woman's exercise of her
14 private decision to terminate a pregnancy before viability is to
16 be except as provided in section 1597-A. After viability an
18 abortion may be performed only when it is necessary to preserve
20 the life or health of the mother. It is also the public policy of
22 the State that all abortions may only be performed only by a
24 physician.

26 Sec. 3. 22 MRSA §1599, as reallocated by PL 1979, c. 663,
28 §133, is repealed.

30 Sec. 4. 22 MRSA §1599-A is enacted to read:

32 §1599-A. Informed consent to abortion

34 1. Consent by the woman. A physician may not perform an
36 abortion unless, prior to the performance, the attending
38 physician certifies in writing that the woman gave her informed
40 written consent, freely and without coercion.

42 2. Informed consent. To ensure that the consent for an
44 abortion is truly informed consent, the attending physician shall
46 inform the woman, in a manner that in the physician's
48 professional judgment is not misleading and that will be
50 understood by the patient, of at least the following:

 A. According to the physician's best judgment she is
 pregnant;

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

 C. The particular risks associated with her own pregnancy
 and the abortion technique to be performed; and

 D. At the woman's request, alternatives to abortion such as
 childbirth and adoption and information concerning public
 and private agencies that will provide the woman with
 economic and other assistance to carry the fetus to term,
 including, if the woman so requests, a list of these
 agencies and the services available from each.

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STATEMENT OF FACT

The purpose of this bill is to preserve current law regarding the role of the State in a woman's personal decision regarding her pregnancy. This bill is intended to ensure that the State's law will not be altered following changes in judicial interpretation of Roe v. Wade, most recently in the United States Supreme Court's decision in Planned Parenthood of Southeastern Pennsylvania v. Casey, issued in June 1992. That decision allowed states greater latitude to enact restrictions on abortion prior to fetal viability.

The State's role in a woman's reproductive decisions is defined in part by laws and in part by judicial decisions interpreting the 1973 Roe v. Wade decision. This bill reaffirms current state policy on a woman's right to terminate a pregnancy.

Current law was enacted in accordance with the limitations set forth in Roe v. Wade. Existing state policy does not restrict a woman's reproductive decisions except that: 1) abortions may be performed only by licensed physicians; 2) there must be adult involvement in a minor's decision to have an abortion; 3) the physician must certify in writing that the woman gave her informed, written consent, freely and without coercion; and 4) an abortion after viability may be performed only when it is necessary to preserve the life or health of the mother. State law also requires that abortion providers meet certain recordkeeping and reporting requirements. This bill leaves all of these requirements untouched. It is not the intent of this bill to remove any existing restrictions.

This bill repeals the law concerning parental notification of a minor's decision to have an abortion that has been superseded by a more recent law. In an Opinion of the Attorney General No. 90-2, January 19, 1990, the Attorney General found that the older law has been implicitly repealed and is no longer in effect. This bill also repeals the provision of law that requires a woman to wait 48 hours after seeing a physician before she may have an abortion. This provision is unnecessarily and unduly burdensome for women in this State because of the demographics of the State. The repealed provisions were permanently enjoined in 1983 by Judge Gignoux for the United States District Court, who determined that these provisions represented unconstitutional restrictions of access to abortion under Roe v. Wade. The bill retains some of the provisions requiring the informed consent of the woman.