

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 819

H.P. 604

House of Representatives, March 8, 1993

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**An Act to Ensure a Woman's Right to Know.**

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Received by the Clerk of the House on March 5, 1993. Referred to the Committee on Judiciary and 1200 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative COFFMAN of Old Town.  
Cosponsored by Senator PARADIS of Aroostook and  
Representatives: AHEARNE of Madawaska, BRUNO of Raymond, CLARK of Millinocket,  
DÉXTER of Kingfield, GOULD of Greenville, JOY of Island Falls, KUTASI of Bridgton,  
MARSHALL of Eliot, MARTIN of Van Buren, MICHAUD of East Millinocket, MURPHY of  
Berwick, NICKERSON of Turner, PINETTE of Fort Kent, POULIOT of Lewiston, REED of  
Dexter, VIGUE of Winslow, Senator: CAREY of Kennebec.

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

2  
4       Sec. 1. 22 MRSA 1598, as reallocated by PL 1979, c. 663,  
§133, is repealed and the following enacted in its place:

6       §1598. Abortions

8           1. Policy. It is the public policy of the State that an  
10       abortion after viability may be performed only when it is  
12       necessary to preserve the life or health of the pregnant woman.  
It is also the public policy that abortions may only be performed  
by a physician.

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

18           A. "Abortion" means the intentional interruption of a  
20       pregnancy by the application of external agents, whether  
22       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.

24           B. "Viability" means the state of fetal development when  
26       the life of the fetus may be continued indefinitely outside  
the womb by natural or artificial life-supportive systems.

28          3. Persons who may perform abortions; penalties. Abortions  
30       may be performed or induced only as follows:

32           A. Only a person licensed under Title 32, chapter 36 or 48,  
34       to practice medicine in the State as a medical or  
osteopathic physician, may perform an abortion on a pregnant  
woman.

36           B. Any person not so licensed who knowingly performs an  
38       abortion on a pregnant woman or any person who knowingly  
assists a nonlicensed person to perform an abortion on a  
pregnant woman commits a Class C crime.

40          4. Abortions after viability; criminal liability. A person  
42       who performs an abortion after viability commits a Class D crime  
44       if:

46           A. That person knowingly disregards the viability of the  
fetus; and

48           B. That person knows that the abortion is not necessary for  
50       the preservation of the life or health of the pregnant woman.

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

4           Sec. 3. 22 MRSA §1599-A and §1599-B is enacted to read:

6           §1599-A. Informed consent to abortion

8           An abortion may not be performed or induced except with the  
10 voluntary and informed consent of the pregnant woman upon whom  
the abortion is to be performed or induced, obtained in  
12 accordance with this section.

14           1. Standards for consent. Except in the case of a medical  
emergency, consent to an abortion is voluntary and informed only  
16 if before the consent is given, the physician who is to perform  
the abortion or the referring physician, or a qualified physician  
18 assistant, health care practitioner or technician to whom the  
responsibility has been delegated by either physician, orally  
20 informs the pregnant woman of the nature of the proposed  
procedure or treatment and of those risks and alternatives to the  
22 procedure or treatment that a reasonable patient would consider  
material to the decision whether to undergo the abortion, and the  
24 pregnant woman certifies in writing before the abortion that she  
has been provided with that information. The elements of notice  
26 and consent required by this section are:

28           A. At least 24 hours before the abortion, the physician who  
is to perform the abortion or the referring physician orally  
30 informs the pregnant woman of:

32           (1) The nature of the proposed procedure or treatment  
and of those risks and alternatives to the procedure or  
34 treatment that a reasonable patient would consider  
material to the decision of whether to undergo the  
36 abortion;

38           (2) The probable gestational age of the fetus at the  
time the abortion is to be performed; and

40           (3) The medical risks associated with carrying the  
42 fetus to term.

44           B. At least 24 hours before the abortion, the physician who  
is to perform the abortion or the referring physician, or a  
46 qualified physician assistant, health care practitioner,  
technician or social worker to whom the responsibility has  
48 been delegated by either physician, informs the pregnant  
woman that:

2           (1) The Department of Human Services publishes printed  
3           materials that describe the fetus and list agencies  
4           that offer alternatives to abortion, that she has a  
5           right to review the printed materials and that a copy  
6           will be provided to her free of charge if she chooses  
7           to review them;

8           (2) Medical assistance benefits may be available for  
9           prenatal care, childbirth and neonatal care, and that  
10           more detailed information on the availability of that  
11           assistance is contained in the printed materials  
12           published by the Department of Human Services; and

13           (3) The father of the fetus is liable to assist in the  
14           support of her child, after birth even when he has  
15           offered to pay for the abortion. In the case of rape,  
16           this information may be omitted.

17           C. A copy of the printed materials produced by the  
18           Department of Human Services pursuant to section 1599-B has  
19           been provided to the pregnant woman if she chooses to view  
20           them; and

21           D. The pregnant woman certifies in writing before the  
22           abortion that the information required to be provided under  
23           paragraphs A, B and C has been provided.

24           2. Violations; penalties. A physician who violates the  
25           provisions of this section commits unprofessional conduct and the  
26           physician's license to practice is subject to suspension or  
27           revocation in accordance with procedures provided under Title 32,  
28           chapter 36, subchapter V or Title 32, chapter 48, subchapter II.  
29           In addition, a physician who performs or induces an abortion  
30           without first obtaining the certification required by subsection  
31           1, paragraph D or with knowledge or reason to know that the  
32           informed consent of the pregnant woman has not been obtained  
33           commits a Class E crime for the first offense and a Class D crime  
34           for each subsequent offense. It is a defense to any action for  
35           violation of this section based on a failure to furnish the  
36           information required by subsection 1, paragraphs A or B if the  
37           physician can demonstrate, by a preponderance of the evidence,  
38           that the physician reasonably believed that furnishing the  
39           information would have resulted in a severely adverse effect on  
40           the physical or mental health of the pregnant woman.

41           §1599-B. Printed information required

42           The department shall publish and make available within 60  
43           days of the effective date of this section the following printed  
44           materials.

2 1. List of services. Geographically indexed materials  
3 designed to inform a pregnant woman of public and private  
4 agencies and services available to assist a woman through  
5 pregnancy, childbirth and while the child is dependent, including  
6 adoption agencies, which must include a comprehensive list of the  
7 agencies available, a description of the services those agencies  
8 offer and a description of the manner, including telephone  
9 numbers, in which the agencies may be contacted, or at the option  
10 of the department, printed materials including a toll-free,  
11 24-hour telephone number that may be called to obtain such a list  
12 and a description of agencies in the locality of the caller and  
13 the services offered by those agencies. The materials must  
14 include the following statement.

15 "There are many public and private agencies willing and able  
16 to help you to carry your child to term, and to assist you  
17 and your child after your child is born, whether you choose  
18 to keep your child or to place your child for adoption. The  
19 Maine Department of Human Services strongly urges you to  
20 contact the department before making a final decision about  
21 abortion."

22 The materials must include information on the availability of  
23 medical assistance benefits for prenatal care, childbirth and  
24 neonatal care and state that it is unlawful for any individual to  
25 coerce a woman to undergo abortion, that any physician who  
26 performs an abortion without obtaining informed consent from that  
27 woman or without according a private medical consultation may be  
28 liable to her for damages in a civil action at law, that the  
29 father of a child is liable to assist in the support of that  
30 child even in instances when the father has offered to pay for an  
31 abortion and that the law permits adoptive parents to pay costs  
32 of prenatal care, childbirth and neonatal care.

33 2. Characteristics of a fetus. Materials designed to  
34 inform a pregnant woman of the probable anatomical and  
35 physiological characteristics of a fetus at 2-week gestational  
36 increments from fertilization to full term, including pictures  
37 representing the development of a fetus at 2-week gestation  
38 increments and any relevant information on the possibility of the  
39 survival of the fetus. The pictures or drawings must contain the  
40 dimensions of the fetus and be realistic and appropriate for the  
41 woman's stage of pregnancy. The materials must be objective,  
42 nonjudgmental and designed to convey only accurate scientific  
43 information about the fetus at the various gestational ages. The  
44 material must also contain objective information describing the  
45 methods of abortion procedures commonly employed, the medical  
46 risks commonly associated with each procedure, the possible  
47 detrimental psychological effects of abortion and the medical  
48 risks commonly associated with each procedure and the medical  
49 risks commonly associated with carrying a fetus to term.  
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52

2 All materials published pursuant to this section must be  
3 prepared in a manner that is easily comprehensible to the average  
4 reader.

6 STATEMENT OF FACT

8 This bill repeals and replaces 2 sections of law regulating  
9 abortions. The first section is repealed and replaced to make  
10 clear that the section has continuing vitality under current  
11 caselaw and is to be enforced. The 2nd section repeals existing  
12 standards for informed consent and replaces them with a provision  
13 modeled after the Pennsylvania statute held Constitutional in  
14 Planned Parenthood of Southeastern Pennsylvania v.  
Casey, \_\_\_U.S.\_\_\_, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).