

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 571

H.P. 429

House of Representatives, January 19, 1999

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### **An Act to Prohibit Partial-birth Abortion.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MACK of Standish.  
Cosponsored by Representatives AHEARNE of Madawaska, DAVIS of Falmouth,  
MENDROS of Lewiston, PLOWMAN of Hampden, Senator DAVIS of Piscataquis,  
Senator MICHAUD of Penobscot and  
Representatives: CLARK of Millinocket, GERRY of Auburn, GILLIS of Danforth,  
MacDOUGALL of North Berwick, McNEIL of Rockland, SHOREY of Calais, Senators:  
BERUBE of Androscoggin, CAREY of Kennebec.

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

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Sec. 1. 22 MRSA §1597-B is enacted to read:

**§1597-B. Partial-birth abortions prohibited**

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

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

B. "Partial-birth abortion" means an abortion in which the physician performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

C. "Partially vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion of a living fetus, for the purpose of performing a procedure the physician knows will kill the fetus, and killing the fetus.

**2. Partial-birth abortions prohibited; exception.** A physician may not knowingly perform a partial-birth abortion and thereby kill a human fetus. This prohibition does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness or injury.

**3. Criminal liability.** A physician who violates this section:

A. Commits a Class D crime; and

B. Is subject to damages awarded in a civil action under subsection 4.

**4. Civil action.** The father, if married to the mother at the time she receives the partial-birth abortion procedure, and the maternal grandparents of the fetus, if the mother has not attained 18 years of age at the time of the abortion, may in a civil action obtain appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. Appropriate relief must include:

2           A. Money damages for all injuries, psychological and  
3           physical, occasioned by the violation of this section; and

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5           B. Statutory damages equal to 3 times the cost of the  
6           partial-birth abortion.

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8           5. Hearing. A physician accused of an offense under this  
9           section may seek a hearing before the Board of Licensure in  
10           Medicine or the Board of Osteopathic Licensure, as applicable, on  
11           whether the physician's conduct was necessary to save the life of  
12           the mother whose life was endangered by a physical disorder,  
13           illness or injury. The findings on that issue are admissible at  
14           the trial of the physician. Upon a motion of the physician, the  
15           court shall delay the beginning of the trial for not more than 30  
16           days to permit such a hearing to take place.

17           6. Immunity. A woman upon whom a partial-birth abortion is  
18           performed may not be prosecuted under this section for a  
19           conspiracy to violate this section or for an offense under  
20           section 1597-A or 1598 based on a violation of this section.  
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22           **Sec. 2. 22 MRSA §1598, sub-§1, as amended by PL 1993, c. 61,**  
23           **§2, is further amended to read:**

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25           **1. Policy.** It is the public policy of the State that the  
26           State not restrict a woman's exercise of her private decision to  
27           terminate a pregnancy before viability except as provided in  
28           section 1597-A. After viability an abortion may be performed  
29           only when it is necessary to preserve the life or health of the  
30           mother or, in the case of a partial-birth abortion, when  
31           permitted under section 1597-B, subsection 2. It is also the  
32           public policy of the State that all abortions may be performed  
33           only by a physician.  
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35           **Sec. 3. 22 MRSA §1598, sub-§4, as enacted by PL 1979, c. 405,**  
36           **§2, is amended to read:**

37           **4. Abortions after viability; criminal liability.** A Except  
38           as provided in section 1597-B, a person who performs an abortion  
39           after viability is guilty of a Class D crime if:

40           A. He That person knowingly disregarded the viability of  
41           the fetus; and  
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43           B. He That person knew that the abortion was not necessary  
44           for the preservation of the life or health of the mother.  
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## SUMMARY

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4           This bill is modeled on the Partial-Birth Abortion Ban Act  
6 of 1997 passed by Congress and vetoed by President Clinton in  
8 1997 (H.R. 1122). This bill prohibits partial-birth abortions  
10 except when necessary to save the life of the mother.  
Performance of a partial-birth abortion in violation of the  
provisions of this bill is a Class D crime. In addition, the  
physician performing the abortion is subject to damages in a  
civil suit. The mother may not be prosecuted.