

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2123

H.P. 1483

House of Representatives, March 30, 1999

**An Act to Require a 24-hour Waiting Period before an Abortion May Be Performed.**

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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 AHEARNE of Madawaska.  
Cosponsored by Senator DAVIS of Piscataquis and  
Representatives: BOUFFARD of Lewiston, CARR of Lincoln, DAVIS of Falmouth, MACK  
of Standish, PERRY of Bangor, SIROIS of Caribou.

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

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Sec. 1. 22 MRSA §1598, sub-§1, as amended by PL 1993, c. 61, §2, is repealed and the following enacted in its place:

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

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

2. Definitions. As used in this section and in sections 1599-B to 1599-E, unless the context otherwise indicates, the following terms shall 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.

A-1. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or to avoid a delay that would create serious risk of substantial and irreversible impairment of a major bodily function.

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

Sec. 3. 22 MRSA §1598, sub-§4, as enacted by PL 1979, c. 405, §2, is amended to read:

4. Abortions after viability; criminal liability. A person who performs an abortion after viability ~~is-guilty-of~~ commits a Class D crime if:

A. ~~He~~ That person knowingly ~~disregarded~~ disregards the viability of the fetus; and

B. ~~He-knew~~ That person knows that the abortion was ~~is~~ not necessary for the preservation of the life or health of the ~~mother~~ pregnant woman.

2           Sec. 4. 22 MRSA §1599-A, as enacted by PL 1993, c. 61, §4, is  
repealed.

4           Sec. 5. 22 MRSA §§1599-B, 1599-C, 1599-D and 1599-E are enacted  
to read:

6           §1599-B. Informed consent to abortion

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10           An abortion may not be performed or induced except with the  
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, technician or social worker  
to whom the responsibility has been delegated by either  
20 physician, orally informs the pregnant woman of the nature of the  
proposed procedure or treatment and of those risks and  
22 alternatives to the procedure or treatment that a reasonable  
patient would consider material to the decision whether to  
24 undergo the abortion, and the pregnant woman certifies in writing  
before the abortion that she has been provided with that  
26 information. The following elements of notice and consent are  
required by this section.

28           A. At least 24 hours before an abortion, the physician who  
30 is to perform the abortion or the referring physician shall  
orally and in person inform the pregnant woman of:

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

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

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

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

2           (1) The department publishes printed material that  
4           describes the fetus and lists agencies that offer  
6           alternatives to abortion, that she has a right to  
8           review the printed material and that a copy must be  
          provided to her free of charge if she chooses to review  
          the material;

10           (2) Medical assistance benefits may be available for  
12           prenatal care, childbirth and neonatal care and that  
14           more detailed information on the availability of that  
          assistance is contained in the printed material  
          published by the department; and

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

20           C. The information in paragraphs A and B must be provided  
22           to the woman individually and in a private room to protect  
24           her privacy and maintain the confidentiality of her decision  
          and to ensure that the information focuses on her individual  
          circumstances and that she has an adequate opportunity to  
          ask questions.

26           D. At least 24 hours before the abortion, the woman must be  
28           given a copy of the printed material described in section  
30           1599-C. If the woman is unable to the read the material, it  
32           must be read to her. If the woman asks questions concerning  
          any of the information or material, answers must be provided  
          to her in her own language.

34           E. Prior to the abortion, the woman must certify in writing  
36           on a certification form provided by the department that the  
38           information required to be provided under paragraphs A, B  
40           and D has been provided. All physicians who perform  
42           abortions shall report the total number of certifications  
          received monthly to the department. The department shall  
          make the number of certificates received available to the  
          public on an annual basis.

44           2. Violations; penalties. A physician who violates the  
46           provisions of this section commits unprofessional conduct and the  
48           physician's license to practice is subject to suspension or  
50           revocation in accordance with procedures provided under Title 32,  
          chapter 36, subchapter V or Title 32, chapter 48, subchapter II.  
          In addition, a physician who performs or induces an abortion  
          without first obtaining the certification required by subsection  
          1, paragraph E or with knowledge or reason to know that the

2 informed consent of the pregnant woman has not been obtained  
3 commits a Class E crime for the first offense and a Class D crime  
4 for each subsequent offense. It is a defense to any action for  
5 violation of this section based on a failure to furnish the  
6 information required by subsection 1, paragraph A or B if the  
7 physician can demonstrate, by a preponderance of the evidence,  
8 that the physician reasonably believed that furnishing the  
9 information would have resulted in a severely adverse effect on  
10 the physical or mental health of the pregnant woman.

11 **§1599-C. Printed information required**

12 The department shall publish and make available within 60  
13 days of the effective date of this section the following printed  
14 material:

15 1. List of services. Geographically indexed material  
16 designed to inform a pregnant woman of public and private  
17 agencies and services available to assist a woman through  
18 pregnancy and childbirth and while the child is dependent,  
19 including but not limited to adoption agencies, which must  
20 include a comprehensive list of the agencies available, a  
21 description of the services those agencies offer and a  
22 description of the manner, including telephone numbers, in which  
23 the agencies may be contacted or, at the option of the  
24 department, printed material including a toll-free, 24-hour  
25 telephone number that may be called to obtain such a list and a  
26 description of agencies in the locality of the caller and the  
27 services offered by those agencies. The material must include  
28 the following statement.

29 "There are many public and private agencies willing and able  
30 to help you carry your child to term and to assist you and  
31 your child after your child is born, whether you choose to  
32 keep your child or to place your child for adoption. The  
33 Maine Department of Human Services strongly urges you to  
34 contact the department before making a final decision about  
35 abortion."

36 The material must include information on the availability of  
37 medical assistance benefits for prenatal care, childbirth and  
38 neonatal care and state that it is unlawful for any individual to  
39 coerce a woman to undergo an abortion; that any physician who  
40 performs an abortion without obtaining informed consent from that  
41 woman or without making available a private medical consultation  
42 may be liable to her for damages in a civil court action; that  
43 the father of a child is liable to assist in the support of that  
44 child even in instances when the father has offered to pay for an  
45 abortion; and that the law permits adoptive parents to pay costs  
46 of prenatal care, childbirth and neonatal care;

2           **2. Characteristics of fetus.** Material designed to inform a  
4 pregnant woman of the probable anatomical and physiological  
6 characteristics of a fetus at 2-week gestational increments from  
8 fertilization to full term, including pictures representing the  
10 development of a fetus at 2-week gestational increments and any  
12 relevant information on the possibility of the survival of the  
14 fetus. The pictures or drawings must contain the dimensions of  
16 the fetus and be realistic and appropriate for the woman's stage  
18 of pregnancy. The material must be objective, nonjudgmental and  
20 designed to convey only accurate scientific information about the  
22 fetus at the various gestational stages. The material must also  
24 contain objective information describing the methods of abortion  
26 procedures commonly employed, the medical risks commonly  
28 associated with each procedure, the possible detrimental  
30 psychological effects of abortion and the medical risks commonly  
32 associated with carrying a fetus to term; and

34           **3. Certification form.** A certification form to be used by  
36 the physician or the physician's agent under section 1599-B,  
38 subsection 1, paragraph E that lists all the items of information  
40 that must be given to a woman by the physician or the physician's  
42 agent.

44           All material published pursuant to this section must be  
46 easily comprehensible to the average reader.

48           **§1599-D. Civil penalties**

50           **1. Civil malpractice action.** Any institutional violation  
52 of this chapter is admissible in a civil suit as prima facie  
54 evidence of a failure to obtain an informed consent. When  
56 requested, the court shall allow a woman to proceed using solely  
58 her initials or a pseudonym and may close any proceedings in the  
60 case and enter other protective orders to preserve the privacy of  
62 the woman upon whom the abortion was performed.

64           **2. Medical malpractice.** Violation of this chapter provides  
66 a basis for professional disciplinary action under laws governing  
68 medical malpractice.

70           **3. Wrongful death.** Violation of this chapter provides a  
72 basis for recovery for the woman for the death of her child under  
74 laws governing wrongful death, whether the child was unborn but  
76 viable at the time the abortion was performed or was born alive.

78           **§1599-E. Construction**

80           This chapter may not be construed to create or recognize a  
82 right to abortion.

