

MAINE STATE LEGISLATURE

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OF THE

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Legislature*

OF THE

STATE OF MAINE

Volume II

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man, Kelley, R. P.; Kilroy, La-Pointe, Lawry, Lewis, E. Lynch, Mahany, Martin, McHenry, McKernan, McMahan, McTeague, Mills, Morin, L.; Morin, V.; Mul-kern, Murchison, Murray, Najarian, O'Brien, Peterson, Pontbri-and, Rollins, Ross, Sheltra, Talbot, Tanguay, Theriault, Tierney, Walker, Webber, Wheeler, Whit-zell, Wood, M. E.

ABSENT — Binnette, Birt, Brawn, Brown, Cameron, Carter, Churchill, Cressey, Curran, Dam, Donaghy, Dow, Dyar, Evans, Faucher, Fecteau, Gauthier, Hancock, Henley, Herrick, Immonen, Kelleher, LaCharite, LeBlanc, Littlefield, McCormick, Norris, Ricker, Rolde, Santoro, Smith, D. M.; Stillings, Strout, Trumbull.

Yes, 47; No, 69; Absent, 35.

The SPEAKER: Forty-seven having voted in the affirmative and sixty-nine in the negative, with thirty-five being absent, the motion does not prevail.

Thereupon, the Minority "Ought to pass" Report was accepted, the Bill read once and assigned for second reading tomorrow.

The Chair laid before the House the fifth tabled and today assigned matter:

Bill "An Act to Provide Protection of Fetal Life and the Rights of Physicians, Nurses, Hospitals and Others Relating to Abortions" (H. P. 1559) (L. D. 1992).

Tabled — June 4, by Mr. Simpson of Standish.

Pending — Passage to be encrossed.

Mr. Huber of Falmouth offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-493) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mr. Huber.

Mr. HUBER: Mr. Speaker and Ladies and Gentlemen of the House: I am sure you all realize that Maine now has no valid abortion law due to the Supreme Court decision on January 22nd of this year and the subsequent U. S. District Court judgment on February 20th. Many of you also know, at least some people would like to pass L. D. 1992 and nothing else.

This is a politically attractive idea but it equals abortion on demand. It would allow abortion up to the day of birth.

The title of L. D. 1992 is An Act to Provide Protection of Fetal Life and the Rights of Physicians, Nurses, Hospitals and Others Relating to Abortions. The Supreme Court defined legitimate state interests in the protection of maternal health and protection of potential human life in the third trimester of pregnancy. L. D. 1992, without the amendment protects hospitals, doctors and to some limited extent the fetus, but not the mother or the potential life of the fetus in the third trimester.

What would the amendment do in addition to the limited protection provided by L. D. 1992? First, it gives a clear statement requiring a physician, either a regular physician or an osteopathic physician to perform an abortion throughout the term of pregnancy. Second, it requires hospitalization for abortion procedures after the 12th week and hospital bylaws are really where most medical standards and medical guidelines are applied and enforced.

Third, it would prohibit after 24 weeks, abortion procedures, except when necessary in the professional judgment of a physician, to protect the life or health of the mother and the judgment would be filed with the department of Health and Welfare in writing. Again, remembering that title of L. D. 1992, which is said to provide protection to fetal life and others relating to abortions, I would like to note that this amendment would also require the consent of the husband, when husband and wife are living together, married. It would also require the consent of a minor herself in addition to consent of her parent, parents or guardian, which is required normally.

It would also incorporate certain provisions of the gentleman from Lewiston, Mrs. Berube's L. D. 1887, which provides for filing of certain data with the Department of Health and Welfare concerning abortion procedures. The unamended L. D. 1992 provides no definition of abortion

and again, I would like to remind you that our past abortion law has been completely invalidated by U.S. District Court judgment. This is where the definition of abortion was contained in the Maine law. Further, it doesn't repeal Title 17, Section 51, which is Maine's old law, which, as I said, is invalid.

And finally, I would like to remind you that the bill as amended would not impose abortion procedures on anyone against their own personal wishes. This amendment provides, I feel, important protection for Maine citizens in the area of maternal health and protects the state's interest in potential human life after viability. Without this amendment, abortion would be available with no restrictions, right up to the day of birth. In short, without this amendment, Maine would have abortion on demand, with no regulation except that provided by normal regulations governing physicians.

I don't think this is acceptable to anyone and I am sure you will agree with me. With this amendment, Maine would have as strict regulation as legally possible under the recent Supreme Court decision. I hope this body will reject abortion on demand and will adopt this amendment in the protection of life and health of Maine citizens and for the protection of potential life.

Ladies and gentlemen, I realize this amendment represents, what I am told, is a somewhat unorthodox approach to a touchy political problem. As I said, there are those who would like to do little or nothing in order to ignore the Supreme Court decision. Politically this would be a route to take. I decided that the clearest demonstration to the additional regulation and protection that could be provided under the Supreme Court decision was to present this in amendment form and let this body make its own decision.

I am sure that all of you know this amendment is essentially my bill to regulate abortion procedures as strictly as is allowed by the Supreme Court decision, which is

L. D. 1529, except that I have deleted the two sections in my bill that covered the same subjects as Representative Jalbert's bills.

My bill, as you know, is still in committee; it has not been reported upon. Because it would be so politically attractive to vote on L. D. 1992 and then do nothing else, I thought it would be best to at least give this body a chance to consider the entire subject one time and to realize the passage of L. D. 1992 alone represents unregulated abortion or abortion on demand.

I do not mean, by presenting this amendment, to undercut the committee system in any way, but do want to take the only way I can think of to make a clear presentation of the choices before this legislature. Do we want unregulated abortion or do we want to control this procedure as strictly and as legally as possible? The only other way I can think of to present this choice to the legislature was to have this bill tabled unassigned for two days at a time until my bill is reported out of committee so these two bills can be considered together. I was told that this could not be done. If someone wants to so move, I will gladly support this approach and would hope that the House would support it also.

This amendment presents a choice between regulated abortion and unregulated abortion. This House will decide what is best for the people of Maine.

The SPEAKER: The Chair recognizes the gentlewoman from Orrington, Mrs. Baker.

Mrs. BAKER: I move this bill be tabled unassigned.

Thereupon, Mr. Jalbert of Lewiston requested a vote on the motion.

The SPEAKER: The pending question is on the motion of the gentlewoman from Orrington, Mrs. Baker, that this matter be tabled unassigned. All in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Thereupon, Mr. Simpson of Standish requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have

the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentlewoman from Orrington, Mrs. Baker, that this matter be tabled unassigned. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Ault, Baker, Briggs, Brown, Bustin, Cameron, Chick, Clark, Connolly, Cooney, Cottrell, Cressey, Crommett, Davis, Donahy, Dow, Emery, D. F.; Farnham, Flynn, Gahagan, Good, Greenlaw, Hamblen, Haskell, Huber, Hunter, Jackson, Kelley, Kelley, R. P.; Knight, LaPointe, Lawry, Lewis, J.; MacLeod, Maddox, Maxwell, McMahon, Merrill, Morin, V.; Morton, Murchison, Najarian, O'Brien, Peterson, Rollins, Ross, Shaw, Silverman, Smith, S.; Snowe, Talbot, Trask, Trumbull, Tyndale, White, Willard.

NAY — Albert, Berry, G. W.; Berry, P. P.; Berube, Binnette, Birt, Bither, Boudreau, Bragdon, Brawn, Bunker, Carey, Carrier, Carter, Chonko, Conley, Cote, Dam, Deshaies, Drigotas, Dudley, Dunleavy, Dunn, Dyar, Evans, Farley, Farrington, Fecteau, Ferris, Finemore, Fraser, Garsoe, Gauthier, Genest, Goodwin, H.; Goodwin, K.; Hobbins, Hoffses, Jacques, Jalbert, Kauffman, Kelleher, Keyte, Kilroy, LeBlanc, Lewis, E.; Littlefield, Lynch, Mahany, Martin, McHenry, McKernan, McNally, McTeague, Morin, L.; Mulkern, Murray, Norris, Palmer, Parks, Perkins, Pontbriand, Ricker, Sheltra, Shute, Simpson, L. E.; Smith, D. M.; Soulas, Sproul, Stillings, Strout, Susi, Tanguay, Theriault, Tierney, Walker, Webber, Wheeler, Wood, M. E.

ABSENT — Churchill, Curran, Curtis, T. S., Jr.; Faucher, Hancock, Henley, Herrick, Immonen, LaCharite, McCormick, Mills, Rolde, Santoro, Whitzell.

Yes, 56; No, 80; Absent, 14.

The SPEAKER: Fifty-six having voted in the affirmative and eighty having voted in the negative, with fourteen being absent, the motion does not prevail.

The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Ladies and Gentlemen of the House: It is not my intention this morning to speak on the merits or demerits of either 1992 or the amendment. It is my intention to speak on philosophy and procedure.

At the hearing on this measure, on these bills, they were all heard at the same time. L. D. 887, L. D. 888, L. D. 952, L. D. 953, L. D. 1854, and L. D. 1529, which is, in itself the Huber bill. The committee, in its judiciousness, studied the bills and reported out in committee, reported out under new draft last Friday, on page 8 of the calendar, a bill relating to the immunity of persons or hospitals refusing to perform or assist in abortions, House Paper 740, L. D. 553, reporting "ought to pass" in new draft, House Paper 1559, L. D. 1992 and under the new title. An Act to Provide Protection of Fetal Life and the Rights of Physicians, Nurses, Hospitals and Others Relating to Abortion. This meant a combination of L. D. 952, 953, 888 and 1824. It left in committee, L. D. 1529.

Last night, quite late, I spent a great deal of time contacting several former officers of this body and several individuals who are former members of this committee who served on the Judiciary Committee. And my question after an explanation of this procedure, was has this ever been done before? The answer was an immediate no.

I can recall back at the beginning of the session when a member—and I can understand any freshman member making any comments or any errors—I can remember when a member, after a bill came out under 17-A, asked to speak, asked for unanimous consent to address the House and then when granted started to speak on that bill. If that procedure

would be followed, I mean we may just as well not have 17-A.

This measure here simply means this: L. D. 1529, which is this amendment—this is the bill and this is the amendment. The amendment is very very much substantially the same as the bill, and whatever changes could be made are so minor, they could be made by committee amendment. And as I state, I do not want to, in any way, debate either 1992 or the amendment. This very definitely circumvents the action and intent of the Judiciary Committee.

This simply operates in this fashion. Let us say that I have a bill that is rather a poor bill or controversial or could be in trouble, and let us say that any of you people in this House have a bill that has been reported out with the unanimous "ought to pass" committee report and my bill is still in committee. I turn around and I draft an amendment, which is exactly the same as the bill that is in committee and present that amendment while the other bill is still in committee.

I have had over the years some very pleasant and I mean pleasant, hectic sometimes, discussion with my very dear friend, and I do not say the word loosely by any means, the gentleman from Bath, Mr. Ross, concerning this problem. I wanted to be fair about the situation and I met him this morning outside of this House, where the gentleman from Falmouth, Mr. Huber, whom I think has been very badly misinformed in this thing, but I didn't ask the question in a way that it would necessitate hesitation, I asked the question in a fair manner. I said, "Rodney, have you ever seen this done before?" Immediately the answer was no. It has not and never been done before. I would like to see this measure pass as it is and then have the Judiciary Committee act upon 1529, which is substantially very much this amendment and if the good gentleman from Falmouth, Mr. Huber, wants to amend it, this is perfectly all right, and then we would debate the issues as they are.

I spoke today to one member of the Judiciary Committee and I explained the situation to her and I told her that in no way did I want to influence her as to how they are going to vote on the bill. I don't know how they are going to vote on the bill anymore than I knew how they were going to vote on what is now 1992.

I don't think this is the proper situation at all. This is a thorough, a complete breakdown of our system. It absolutely circumvents the action of a committee which is doing a fantastic job of work, as any other committee does. It is something—as I repeat myself—in the taking over at any time anybody wanted to. And I think this thing here, it creates a mammoth problem should we go along with it.

I want to debate, after the bill is reported out of committee. I want to debate the bill on its demerits or merits or merits or demerits. I don't want it done this way. If the good gentleman from Falmouth, Mr. Huber, had wanted this committee — these bills have been in committee for weeks—he could have well have gone to the chairman of the committee and said to him, would you include my bill into whatever is going to be packaged out, if it is going to be packaged out? I think that would have been the best procedure. Even if my motion would not prevail, I still would not, Mr. Speaker, debate the issues on the bill, because this amendment, which is this bill, is in committee. The bill, 1992 has been wrapped up in a package and reported out unanimously by the Judiciary Committee. 1529, which is exactly very much this amendment, has not been decided upon by the Judiciary Committee. That is when I want to discuss it, win or lose.

Mr. Speaker, first I would like to thank the gentleman from Standish, Mr. Simpson for tabling the bill for one day. I now move the indefinite postponement of House Amendment "A" and I ask for a roll call when the vote is taken.

The SPEAKER: The Chair recognizes the gentleman from Bath, Mr. Ross.