

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Ninth  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**First Regular Session**

May 7, 1979 to June 15, 1979

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August 3, 1979

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vices reporting "Ought to Pass" as amended by Committee Amendment "A" (H-447)

(H. P. 960) (L. D. 1185) Bill "An Act to Exempt Farmland from Sewer Assessments When the Land Receives no Benefit from this Construction" Committee on Public Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-452)

(H. P. 913) (L. D. 1118) Bill "An Act Concerning Setting of Electric Rates by the Public Utilities Commission" Committee on Public Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-453)

No objections being noted, the above items were ordered to appear on the Consent Calendar of May 18, under listing of Second Day.

#### Consent Calendar Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(H. P. 1259) (L. D. 1507) Bill "An Act to Exclude Chainsaw and Skidder Allowances in the Computation of an Employee's Average Weekly Wage Under the Workers' Compensation Act."

(H. P. 1207) (L. D. 1540) Bill "An Act to Enable Delegation of the Prevention of Significant Deterioration of Air Quality Program" (C. "A" H-429)

(H. P. 1126) (L. D. 1396) Bill "An Act to Make Substantive Changes in the Forestry Statutes" (C. "A" H-428)

(H. P. 1185) (L. D. 1458) Bill "An Act to Allow Approved Conservation Plans to Satisfy the Requirements of the Water Pollution Abatement Licensing Program" (C. "A" H-427)

(H. P. 1130) (L. D. 1399) Bill "An Act to Amend the Split Sentencing Provisions of the Criminal Code"

(H. P. 1067) (L. D. 1348) Bill "An Act to Establish Standard Assessment Procedures for the Tax Laws" (C. "A" H-431)

No objections having been noted at the end of the Second Legislative Day, the House Papers were passed to be engrossed and sent up for concurrence.

#### Later Today Assigned

(S. P. 377) (L. D. 1157) Bill "An Act to Authorize the Provision of Services to Developmentally Disabled Children" (C. "A" S-163)

On the objection of Mrs. Prescott of Hampden, was removed from Consent Calendar, Second Day.

Thereupon, the Committee Report was accepted and the Bill read once.

Committee Amendment "A" (S-163) was read by the Clerk.

On motion of Mrs. Prescott of Hampden, tabled pending adoption of Committee Amendment "A" and later today assigned.

(S. P. 140) (L. D. 316) Bill "An Act to Insure the Accountability of Counties in Expenditure of Federal Funds" (C. "A" S-175)

(S. P. 381) (L. D. 1213) Bill "An Act Concerning Insurance Consultants" (C. "A" S-178)

(S. P. 179) (L. D. 409) Bill "An Act Concerning the Maine Development District Law"

(H. P. 1144) (L. D. 1406) Bill "An Act Concerning Detentions, Public Proceedings and Recording Requirements under the Juvenile Code" (C. "A" H-433)

(H. P. 1167) (L. D. 1435) Bill "An Act to Clarify the Interstate Corrections Compact"

(H. P. 806) (L. D. 1009) Bill "An Act Relating to the Powers of Hospital and Medical Service Organizations"

(H. P. 724) (L. D. 911) "An Act Concerning Traditional Methods of Construction Under the Manufactured Housing Statutes"

(H. P. 270) (L. D. 344) Bill "An Act Concerning Licenses Issued by the Department of Inland Fisheries and Wildlife" (C. "A" H-438)

(H. P. 635) (L. D. 786) Bill "An Act Concern-

ing the Categories of 'Horseless Carriage' and 'Antique Motor Car' under the Motor Vehicle Statutes" (C. "A" H-439)

(H. P. 1043) (L. D. 1194) Bill "An Act to Provide Moneys for Snow Removal at Private Airports Open to the Public" (C. "A" H-440)

(H. P. 732) (L. D. 919) Bill "An Act to Update the Insured Value Factor in the Computation of Legal Tuition Fees under the Education Statutes" (C. "A" H-441)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were passed to be engrossed in concurrence, and the House Papers were passed to be engrossed and sent up for concurrence.

#### Passed to be Engrossed

Bill "An Act Concerning Assistance to Blind or Disabled Voters in Marking Ballots" (S. P. 549) (L. D. 1611)

Was reported by the Committee on Bills in the Second Reading and read the second time, the Senate Paper was passed to be engrossed in concurrence.

Bill "An Act Relating to Abortions" (H. P. 1394) (L. D. 1612)

Was reported by the Committee on Bills in the Second Reading read the second time.

The SPEAKER: The Chair recognizes the gentleman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I know that we had quite a debate on this yesterday and I will only hold this up for a minute for your consideration.

I am not an attorney but I am a woman and I was extremely offended by some of the things that were said here yesterday.

I would like to explain something to Mr. Laffin and possibly to some other people in this House, and it is probably something that he will never understand and possibly some other people will never understand but I will say it anyway.

Yesterday, he spoke about butchers and he spoke about sad people in desperate situations. Pregnancy can create a very desperate situation for many women, particularly a young, single woman. The sad thing is that with laws like this, if we pass them, we are no longer allowing safe, legal abortions for these women. We are going to send them to butchers because they already are in desperate situations.

As I talked to people this morning and in the last few days, I have been very surprised with some of the comments. A couple of men told me this morning that they wished only the women had to vote on this, that they didn't feel they had the background to vote on it. I don't know if that is true or not. I just really hope today that you consider what you are voting on and how it affects your constituency and the entire state.

When I was a Freshman in college, whatever year it was, I can't remember it, I got out in 1971, there was a young gal there who was pregnant, and in the State of Maine at that time, because of her financial situation, she could not have an abortion. She was desperate and she went in the back of a van and she got one and she died. I will never forget that. There are probably many people on that campus who won't.

This is a situation that you are going to create by passing bills like this.

I would like to move the indefinite postponement of this bill and hope you will all support me.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mrs. Martin.

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I am a woman too, and I don't believe in abortions of any form. First, I must say to you that there are enough preventives on the market that no one should have to have an abortion. The only problem with these people is that they want their cake and eat it all at the same time. They don't want

to protect themselves, they are too lazy to begin with and there is no reason why they can't protect themselves. A girl in college should have enough brains to understand what she is doing. I am sorry, but I am a woman too and I feel just the opposite of Miss Brown.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I must respond to that. Being a school teacher, having taught in the fifth grade for five years, last year I spent a good deal of time in the Junior High and High School and, believe me, these are not college people that are getting pregnant out of wedlock. There are a great number of children in the sixth grade, seventh grade, eighth grade, on up, and don't tell me about sex education because there is very little sex education in the schools now. That is the last thing on the list. When they start cutting, that goes.

You talk about birth control devices—a lot of these kids don't know about birth control devices. They think you take one pill and you are all set. So, let's look at this realistically if we are going to talk about sex education and what other ways there are to prevent pregnancy. The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Brannigan.

Mr. BRANNIGAN: Mr. Speaker, Ladies and Gentlemen of the House: There is a great deal of confusion, I believe, about what we voted on yesterday, how we voted, and I would like to begin by clearing that up as best I can.

The Speaker cleared it for us yesterday but at least the press, and I am not sure that any of the press is here today, I hope that they will all get straight what we voted on yesterday. It was a confusing vote because the original bill was put in by Representative Laffin; it was put out in new draft. Representative Laffin got up and moved the new draft but then he spoke on his bill. We voted the New Draft.

The new draft deals with viability and most of the debate revolved around the word "viability." The press and the television people picked up that we voted viability but they combined that with Mr. Laffin's original bill and they are saying that we say viability is 12 weeks, the first trimester. I am sure that we did not do that viability was 12 weeks. Medical science has made great strides in neonatal care, but they have not been able to get to the 12 week issue.

I have great strong feelings about this issue. I have been dealing with this issue in professions, the pastoral profession and mental health profession for many years. My training is in ethics, philosophy, theology, mental health. I have had to deal with this in my own personal beliefs and with the beliefs of the people that I have counseled and led and worked with.

I hope the people who have questions about the issue of viability, first trimester, second trimester, third trimester, I wish we would all, at least, get it clear. It is very complicated legal issues, very complicated medical issues and very complicated moral issues.

Probably the best summary yesterday came at the early part of the discussion by the good gentleman from Farmington, Mr. Morton, but after things went on, I am sure that probably got lost.

Viability means that a child can live outside of the mother's womb in some way. Viability used to be considered I know very little about the legal, I know the medical because it ties in with the ethical and if other people know the medical better and can correct me, please do, but usually we think of 24 weeks when a doctor is trying to get a baby as close to term as they can when she is in danger of losing it, they try to get at least to six months. If we can get by six months, we have a chance. So, that is kind of viability, as someone said yesterday, "Kind of," but there is no definite line of viability, absolutely not. I believe the record is 21 weeks. a

one pounder born in the United States within the last four or five months. I haven't read down the road how the little person did but it was normal formation, so 24 weeks is not it, 21 weeks is not it. What is it?

The expression was used by Mr. Simon yesterday about being tarred by a broad brush on another issue, but he tarred some of us with a broad brush on this issue. He said those of us who would vote against this might be ones who wanted to see abortions right to the last day of term. That is not true. I would like to vote for a viability bill but it has to be definite. I told Representative Laffin yesterday, at least your bill was more honest because it named a time, 12 weeks, first trimester. I think that is too early, and if we were going to be voting on his bill this morning, we would have to talk about the whole problem of amniocentesis tests for deformed children, etc., but we are not voting on that, we are voting on viability, which is somewhere around 24 weeks. That is what we will have to be voting on again this morning. I have no doubt what the vote will be but I think we at least need to be clear on it.

Those of us who are going to be voting against this, please note why we are voting against it, not because we want abortions willy-nilly, abortions aren't done willy-nilly anyway, but because we can't vote for something that will put doctors in an impossible position of knowing what is viability and what is not, and they go to jail for it jail because they have to make a decision?

Many feel there should be no abortions, we are not dealing with that, supposedly. A doctor has to do these, should do these, under the Constitution, and they have to make decisions.

Personally, I believe that abortions are wrong and they are absolutely wrong somewhere between 12 and 24 weeks, but I don't know where.

Representative Brown has asked for indefinite postponement, I would encourage you to vote indefinite postponement for this indefinite bill.

The SPEAKER: The Chair would like to thank the gentleman from Portland, Mr. Brannigan, for attempting to raise the issue, which I will attempt again to respond to so the press does not get confused, as it can from time to time. We all can from time to time, I guess.

The only matter before us today, since we adopted the Committee Report yesterday, is the redraft, and that is why on the board now the only thing you see is L. D. 1612, that is the redraft, that is the only thing now before this body. For all practical purposes, L. D. 1061 is dead. It has been replaced and the only thing before us now would be the new draft, which is 1612, and as a result of that, the debate must be restricted and should be restricted to that particular version.

I hope that clarifies the situation a little bit for everyone and in particular for the press, so the correction can be made to members of the general public.

The Chair recognizes the gentleman from Westbrook, Mr. Laffin.

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I did not intend to speak on this again this morning. I think the positions are very clear to the members of this House, but yesterday I thought I had said, if I have offended anyone in this House on my remarks because I believe so strongly against abortions, I apologize. I thought that I did that on the floor of this House.

Miss Brown, I am very sorry about your girlfriend that died because of an abortion but I am also sorry today for all the millions of babies that are also put to death which could be alive.

I didn't speak on abortions yesterday in the fashion that I was going to because there were young children in here as Pages. I wasn't going to talk on what I have for a report of how a live baby is murdered and I am not going to talk on

that this morning, but I am going to answer a few questions.

My good seatmate in front of me, the Representative from Portland, Mr. Brannigan, did talk to me about my bill, but we have before us today the second and third trimester bill; it is a good bill. Remember, doctors make decisions of life and death every day. That is what they are trained for. Whether you have some kind of a decision about a new heart or whatever we think is wrong and what we think is best for the people of Maine. That is what we are making our decisions on. I am sure there are going to be courts tested, and so be it.

Yesterday, we had a lot of lawyers in this House telling that my bill was unconstitutional, and that is their prerogative, nothing wrong with that. But according to Roe versus Wade and the decisions that were laid down by the Supreme Court, my bill, I believe, is constitutional because I have worked with an Attorney General and, by the way, the Attorney General that I worked with, I don't know how many meetings we had, we researched it, we dug up those decisions by the Supreme Court, we went all over it. I know the bill before us today is legal and will survive a constitutional test.

So many people said about my bill, you are forgetting the woman. No I'm not, I'm not forgetting the woman, God love them, we think the world of them, but I am remembering the babies that could be brought into this world, and that is all my bill addresses.

It is no disgrace—the lovely lady from South Portland makes you think it is a stigma for a child to make a mistake and get in the family way. It is a mistake. We are not back in the 18th century where we lock them in a closet and get rid of them. We face the facts of reality that young people do make mistakes. We are not arguing that question this morning.

That baby has a right to live and that baby has a right to be adopted. That was never brought out yesterday. Not one person that opposed my bill brought out adoption. I say it may be a hardship on the person that got themselves in that position in the first place, but we are not even discussing that. All we are trying to do is save those little babies' lives so they may be adopted and live a normal life, at least given a chance in this world. That is all I am asking.

We have a group of people in our society—no, I am not going to go into that this morning because if I do, I am going to get upset and I want to be very calm. I am just trying to answer a few questions that were brought up here yesterday.

Truthfully, I don't believe that I offended Representative Morton but he said I did, so I will accept that. I don't believe that in my heart, because Representative Morton can take more than what I gave him yesterday and I am sure before we get out of here, I will give him more than what I did yesterday. So, I don't believe he truly was offended. Maybe some of the people he knows might have been offended but not Representative Morton.

All I am asking is to pass this, keep it going. I have spoken so often about life being so precious, some people don't consider life precious at all, but I do. I consider life very precious and I am very glad to have lived in the State of Maine and I am proud, I am very proud and I am very humble.

I take exceptions when certain people say things to me, because I know in my heart how I feel, and I am not talking about religion. We will leave religion in the churches and let the priests and the preachers speak on religion, but what I am talking about is what is right, and that is to save these little babies' lives. I know that we have great reservations about the capabilities of doctors but I, for one, have an awful lot of faith in them. They know what they are doing and don't think they don't.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of

the House: I just heard from one of my favorite people in the House, I must say, and before that, we heard from what I think is one of our best and most eloquent speakers, Representative Brannigan.

I have a question to pose as a result of his statement and that is, must a physician perform an abortion? That is what I understood you to say, and it is my understanding that it is really a decision that a physician can make on his own if he ever wishes to perform abortions.

The SPEAKER: The gentlewoman from Waterville, Mrs. Kany, has posed a question through the Chair to the gentleman from Portland, Mr. Brannigan, who may respond if he so desires.

The Chair recognizes that gentleman.

Mr. BRANNIGAN: Mr. Speaker, Ladies and Gentlemen of the House: Yes, Representative Kany, I tried to back off from that as I was saying it—physicians must, I believe, as a whole. I was thinking more of that than I was of individuals, who cannot go against their conscience, but I was trying to say that on the Supreme Court's ruling, it would seem to me that a physician as a whole must do this.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: To follow through on this, I think some very good questions have been raised on the whole question of viability, but because a physician does have latitude on determining if they wish to perform that abortion, perhaps, if there is any question in the physician's mind as to viability, they could decline to perform an abortion and that might help with our problem trying to define viability.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. Silsby.

Mr. SILSBY: Mr. Speaker, Ladies and Gentlemen of the House: I know this is a very emotional issue. I would, however, like to respond to the gentleman from Portland, Mr. Brannigan's question concerning viability and the only way I can respond to that question is to read some of the language from the latest United States Supreme Court, which is Colautti against Franklin, decided January 9, 1979. This is a lengthy decision and it has many parts which are not relevant to the issue we are discussing right now but it does, in part, refer to viability specifically. I would like to read one paragraph, which is not too long, which is right on the point.

"In these three cases," which is Roe against Wade; Doe against Bolton and Planned Parenthood, which you heard about yesterday, "in these three cases, this court has stressed viability, has declared its determination to be a matter for medical judgment and has recognized that differing legal consequences ensue upon the near and far sides of that point in the human gestation period. We reaffirm these principles. Viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus sustaining survival outside the womb with or without artificial support. Because this point may differ with each pregnancy, neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability, be it weeks of gestation or fetal weight or any other single factor as the determinant of when the state has a compelling interest of the life or health of the fetus. Viability is a critical point, and we have recognized no attempt to stretch the point of viability one way or the other."

That is the definition the Supreme Court has left us with. We know that the states have the power to enact legislation in this area. They have left the determination of viability up to the physician.

I can't find the other section which I was going to refer to at this moment, but it says in effect that the legislature has the power to take

judicial sanctions against the physician who does not perform the abortions within the scope of viability. That is, in one sense, the reason that the bill was drafted in Section B the way it was. Abortions after viability disregarded the viability of the fetus—it was stated that way because the physician, making that judgment, if he knowingly disregarded the viability, and it would be up to him to determine when the viability was. The word “knowingly,” which is used in this bill, is taken right from the Maine Criminal Code and has a specific definition and therefore gives us the element of knowledge that is required in this bill.

I hope that this clears up some of the questions that have been raised. I know that it won't change any minds.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I won't speak long this morning. I do want to let the gentleman from Westbrook know that he did offend me yesterday, he offended me personally and I think I delineated why at the time.

I just want to make two or three points. Abortion is a legal process in the United States today. It is a matter of law and there is no question about that.

It is true that we ask doctors to make decisions and doctors do make decisions day by day in matters of life and death, and those decisions are subject to very stringent ethic and canons of the profession and also subject to the laws of the state with respect to liability and all that sort of thing.

This bill does, however, put one particular medical technique under special notice and special knowledge and provides for a special sanction. I have heard the arguments that the gentleman just purported relative to viability and the legal terminology of “knowingly,” but I want you folks to know that facing the possibility of a jury, a jury trial, there is no doubt in my mind that the prospect of this kind of criminal sanction cannot help but chill a doctor's decision-making process.

It is definitely going to make the determination of viability which the gentleman from Portland so adequately and eloquently pointed out was not something you can determine on a precise basis. Every medical authority agrees to that. Many doctors do not have the sophistication that is available to university hospitals and the testing availability and hence will be subject to many, many suits with respect to their decision.

Therefore, I feel as though this is a very bad and unnecessary bill. Doctors are presently liable for what they do without this bill.

Finally, I want to make the positive point that a woman has a right to choose and she too should not be inhibited by the fact that her doctor has to say no because of his fear of a criminal sanction.

The gentleman from Westbrook pointed out that life is precious and I certainly agree with that. I would also like to mention the fact, and most strongly that we are a highly civilized society and the quality of life is precious. A woman should have the opportunity to make choices with respect to the quality of her life.

Mr. Speaker, if it has not already been requested, I would ask for the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Wiscasset, Mr. Stetson.

Mr. STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I think we are missing a very important point in the pending bill, L. D. 1612, that is now before you on the motion to indefinitely postpone. I would like to call your attention to section 3 of that bill, persons who may perform abortions, and it says right there, only a person licensed under Title 32, Chapter 36 or Chapter 48, to practice medicine in Maine as a medical or osteopathic physician may perform an abortion on another person. I don't think we want to indefinitely postpone a

bill that makes that provision in our law.

Mr. Morton says that doctors are liable for what they do without this bill, but the person in the back of that van that Miss Brown referred to, I warrant was not a doctor, and is going around scott free because there was no law under which he could be prosecuted.

I suggest to you that the medical profession was consulted through their representatives in the drafting of L. D. 1612. I sat with the Representative of the Maine Medical Association and we discussed at length whether or not this particular bill would have a chilling effect on a reputable physician's decision whether or not to perform the abortion. The answer we received, those of us who were working and working hard on the redraft that is now before you, the answer we received was no, there would not be such a chilling effect, that actually all this bill says is, good sound medical practice shall be the policy in the State of Maine. And before you indefinitely postpone this bill and all its accompanying papers, I would suggest that you direct your attention to all of the provisions of this bill. Before you indefinitely postpone all that, just stop and think who may perform an abortion in the State of Maine under our laws today.

The SPEAKER: The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I don't think that Mr. Stetson meant to say that the Maine Medical Association was in favor of abortion. I am sure he didn't, but I want to make sure that everybody understood that that was not the case, because I know a number of doctors who are on the Maine Medical Association who would not be in favor of it.

The SPEAKER: The Chair recognizes the gentleman from Wiscasset, Mr. Stetson.

Mr. STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I thank the gentleman from Old Town for straightening that out. No, the doctors in the State of Maine, some of them, will perform abortions, other doctors will not perform abortions. Certainly I appreciate that remark, because I did not mean to imply that the doctors in the State of Maine are in favor of abortions or against abortions. I simply meant to point out that in the careful drafting of L. D. 1612, we were very much aware, as much as we could be, of whether or not this particular draft would have such a chilling effect on sound medical practice, that it would drive the perspective patient into an illegal or unprofessional type of procedure. That is all I meant to imply when I made mention of our consultation with the representative of the Maine Medical Association.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Tarbell.

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair if I might.

My question is to those people who have been doing a great deal of work in this bill and particularly those who have been doing the legal research, it is permissible, and have you really looked in to this question for anyone who would want to challenge the legality and the constitutionality of this proposed criminal statute to bring some form of an appeal in our federal courts prior to the actual legal effect or the effective date of the act so that the questions could be presented and could be answered through our courts of law short of the point of the criminal prosecution of physicians in our state to try to test the legality of the law?

I think one of the points that was raised here today is that this is a very grave and a very drastic way to write statutes and to test them to actually bring about a criminal prosecution and so my question is can we do that in another way?

After reading the Danforth case and the Colautti case, which are two cases which have been cited in this debate, in both of those cases

an action was brought by physicians against the states in which they were located prior to the effective date of the act so as to test them. I wonder if that has been looked into in this matter as well?

The SPEAKER: The gentleman from Bangor, Mr. Tarbell, poses a question through the Chair to any member of the House who cares to answer.

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

Mr. SIMON: Mr. Speaker, Ladies and Gentlemen of the House: I would suggest that you have ample precedent for a court test of the type that he envisions, and that is Roe vs. Wade itself. Roe vs. Wade involved a Texas criminal statutes that was challenged in federal district court through a declaratory judgment action. Jane Roe, a person using a pseudonym, and others sued the district attorney in the county in which she resided seeking a declaratory judgment and an injunction restraining the defendant from enforcing the statutes. This is, I believe, a fairly common practice in federal courts and if that were deemed worthwhile by those who opposed this bill, I believe that would be the proper procedural course for them to take.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Woman of the House: If, as Representative Stetson has indicated, we are missing the point and that he sees it important or perhaps the most important point of this bill is that who may perform an abortion, then I would suggest that perhaps we could amend this bill and take out the sections that deal with viability and leave in the sections that deal with who may perform an abortion. I would further question representative Stetson and any other member of the legal profession if, indeed, right now, who can perform an abortion, I would think that anyone who performs a medical procedure, whether it be surgical or not, must be a member of the medical profession.

The SPEAKER: The Chair recognizes the gentlewoman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker, Ladies and Gentlemen of the House: I attempted to answer that question yesterday when I referred to a bill that was defeated in this chamber and at the other end of the hall about four years ago. In fact, there is no constitutional method of performing an abortion today. We have an illegal and unconstitutional law on our books. There is no definition of who may perform an abortion in statute and the reason there is no definition is because people who were opposed to abortion refuse to take that unconstitutional statute off our books.

I certainly agree with the gentlewoman from South Portland that it would be fine if we wanted to define and, in fact, we have tried in the past to define who may perform an abortion, I would only say that by replacing one unconstitutional statute with another one, we have certainly made progress.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to reply somewhat to the gentleman from Wiscasset, Mr. Stetson. The gentlewoman from Falmouth has done a good job of pointing out that there have been attempts made to pass laws since the Supreme Court decision here in the State of Maine which would recognize the fact that abortion was legal and to circumscribe how it should be done and by whom, and they have always been knocked down by the people who oppose abortion under any circumstances and hence don't want any law on the books which says that it is legal, even though it is the law of the land.

I would only point out with the respect to the remarks of the gentleman from Wiscasset, who very carefully described the way that this bill

was drafted in the smoke filled room, that they worked it up and they had several lawyers, presumably from the Judiciary Committee and a doctor. All I would suggest, ladies and gentlemen, that poor doctor should have had his own attorney there, because I am sure he was speaking from his professional points of view and I am sure that he was saying that doctors would make decisions based on their professional knowledge, but I doubt very much if it was pointed out to him that not necessarily his bad judgment but an allegation of his bad judgment would subject him to a trial in Superior Court before a jury when no longer would professional judgments be taking place but emotions, and all the full gamut of things we have heard in the debate in this House would be spread before the jury. I sincerely doubt if he would have been able to represent himself properly there. As I say, it is too bad he didn't have his own attorney.

The SPEAKER: The Chair recognizes the gentleman from Wiscasset Mr. Stetson.

Mr. STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I regret that my good friend from Farmington has seen fit to make such allegations as he has just made. The drafting of this bill was not done in a smoke filled room. I made no reference to any doctor being present. I made reference to a Representative of the Maine Medical Association being present, who happens to be a lawyer.

The people who assisted in the drafting of this bill were working conscientiously to try to arrive at a legal, constitutional law to replace the unconstitutional law to replace the unconstitutional provision that remains on our statute books. Why it still remains puzzles me. Section 1 of the pending bill would repeal that unconstitutional law and get it off the books, but this law is not unconstitutional, Mr. Morton.

You have heard Mr. Simon explain and quote to you from the decisions of the Supreme Court. You have heard the gentleman from Ellsworth, Mr. Silsby, quote to you the most recent decisions of the Supreme Court of the United States on this question of viability. I warrant to you, Mr. Morton, this bill is not unconstitutional, according to the word of the Supreme Court, which happens to be the supreme law of this land.

Now, I don't know how you draft legislation, but I do it with a great deal of care, and it is not in a smoke filled room anymore than it is in the back of a van. I ask you good people to look at this bill and if you feel that you want abortions performed in the State of Maine by every Tom, Dick, and Harry, go ahead and indefinitely postpone this bill, but if you want to limit abortions to be performed by physicians licensed in the State of Maine, then I urge you not to indefinitely postpone this bill.

Mr. Morton of Farmington was granted permission to address the House a third time.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry I misheard the gentleman from Wiscasset. I thought he said the physician was there. Be that as it may, my point was that the physician who is going to be subject to this law is still going to have to face the jury trial, not a lawyer. He is going to have to have a lawyer to defend him.

The gentleman said that the purpose of this bill was to limit non-professional abortions. I certainly support that, and as the gentlelady from South Portland pointed out, we could amend everything out except that portion of the bill and that would suit me fine. This bill was originally put in and drafted to limit abortions in the second trimester, very definitely, no question about it, that was the motive behind the bill. It still does that, ladies and gentlemen, if that is what you want to do, and I am sure I have no delusions about what the vote is going to be if that is what you want to do, then vote against the motion to indefinitely postpone. I am going to vote to indefinitely post-

pone the bill.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: I voted for this bill yesterday and I do intend to vote for it today. Certainly, very substantial questions have been raised, and if people do believe that there is question of vagueness regarding the constitutionality of the word and term viability, since this is a major issue before our legislature, it would be a solemn occasion and we should ask our law court, our Supreme Court, to address that very question. I am just offering that as a suggestion to this House.

The SPEAKER: The Chair recognizes the gentlewoman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, Ladies and Gentlemen of the House: All we need is one more court decision, one more attorney's opinion, let's get back to the issue before us this morning. The decision to choose to have an abortion should be left to the woman and a trained medical physician. That is all we are asking. We already have a law on our books which tells the physician to take all precautions possible to save the life of an aborted fetus. That is the issue that you are all concerned about, it is already on our books. Please let's vote on this. We are not going to change anybody else's vote this morning. I urge you to support my motion to indefinitely postpone it.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker, Ladies and Gentlemen of the House: The good gentlelady from Bethel, Miss Brown, has pointed out that there is a statue on the books that requires a person in a responsible situation to take care to preserve the life of a live born child. This statute that is before us comes in before the child is live born and protects a viable fetus within the guidelines established by the Supreme Court. The gentlelady from Bethel, Miss Brown, has asked that we do one thing, make sure that such abortions as are done are done by licensed physicians.

L. D. 1612 does a second thing. It limits non-therapeutic abortions to the period before viability. Viability has been defined by the Supreme Court in one decision after another. It is not a question of vagueness. The Supreme Court of the United States would not waste its time deciding another case on the very same issue that it decided in Planned Parenthood of Central Missouri vs. Danforth. The issue before us is whether we want to replace an unconstitutional statute with a constitutional statute.

Many of us who worked on this statute are not zealous on the abortion issue. Many of us have approached this not as pro life or pro choice but have tried to approach it as pros. We have come up with a product. We submit it to your judgment. We would be happy to submit it to the judgment of the Supreme Judicial Court of Maine or the federal courts or the United States Supreme Court. We do ask, however, that you take a good look at the statute, take a good look at the Supreme Court opinions, and vote against the pending motion for indefinite postponement.

Mr. Speaker, if the yeas and nays have not been asked for already, I ask for them now.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. Silsby.

Mr. SILSBY: Mr. Speaker, Ladies and Gentlemen of the House: Just briefly, I would like to clear up a remark made by Mr. Morton, who is not in his seat, to the effect that this bill was hammered out in a smoke-filled room. I would just like the gentleman to know that up in Judiciary, we have a no smoking rule.

The SPEAKER: The Chair recognizes the gentlewoman from Cape Elizabeth, Mrs. Masterton.

Mrs. MASTERTON: Mr. Speaker and Members of the House: I have been sitting here the

last couple of days and listening to this debate with great interest and anxiety. I might say.

It seems to me that the crux of our problem, my problem with this bill is Page 2. Subsection 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. In a sense, that is a definition, but it is a very broad definition. Practically speaking, the one who defines viability would be the doctor. And since in the course of our discussion it has been revealed that in all the court decisions there never has been a pinning down of weeks or days or a real good definition of viability that is workable legally for the legal and medical professions.

I say that this definition does us no good at all. Who is going to be responsible for deciding when a fetus can live outside the womb? How does the doctor know? The fetus is still in the womb. The only way to prove it is to take the fetus out of the womb. Is the lawyer any better at proving this? Are the juries? That is the sticky point of this whole issue that we have been debating. That is an obscure, ambivalent definition, and that is why I am going to vote against the bill.

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 Bethel, Miss Brown, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker, I request leave of the House to pair my vote with the gentleman from Biddeford, Mr. D. Dutremble. If he were present and voting, he would be voting no; if I were voting, I would be voting yes.

#### ROLL CALL

YEA — Alopis, Bachrach, Baker, Benoit, Berry, Brannigan, Brenerman, Brown, K.L.; Connolly, Cox, Davies, Dellert, Doukas, Dow, Drinkwater, Fenlason, Garsoe, Gowen, Hall, Howe, Huber, Hughes, Hutchings, Immonen, Jackson, Kiesman, Lowe, Lund, MacEachern, Masterman, Masterton, Maxwell, McKean, Morton, Nelson, M.; Nelson, N.; Post, Reeves, J.; Reeves, P.; Rolde, Sewall, Small, Sprowl, Tierney, Vincent, Whittemore

NAY — Austin, Barry, Beaulieu, Berube, Birt, Blodgett, Bordeaux, Boudreau, Bowden, Brodeur, Brown, A.; Brown, K.C.; Bunker, Call, Carrier, Carroll, Carter, D.; Carter, F.; Chonko, Cloutier, Conary, Cunningham, Curtis, Damren, Davis, Dexter, Diamond, Dudley, Dutremble, L.; Elias, Fillmore, Fowlie, Gavett, Gillis, Gould, Gray, Gwadosky, Hanson, Hickey, Higgins, Hunter, Jacques, E.; Jalbert, Joyce, Kane, Kany, Kelleher, Laffin, Lancaster, LaPlante, Leighton, Leonard, Lewis, Locke, MacBride, Mahany, Marshall, Martin, A.; McHenry, McMahon, McPherson, McSweeney, Michael, Nadeau, Nelson, A.; Paradis, Paul, Payne, Pearson, Peltier, Peterson, Prescott, Rollins, Sherburne, Silsby, Simon, Smith, Stetson, Stover, Studley, Tarbell, Theriault, Torrey, Tozier, Tuttle, Twitchell, Viollette, Vose, Wentworth, Wood, Wyman. The Speaker.

ABSENT — Brown, D.; Churchill, Hobbins, Jacques, P.; Lizotte, Lougee, Matthews, Norris, Roope, Soulas, Strout.

#### PAIRED — Dutremble, D.-Mitchell.

Yes, 46; No, 92; Absent, 11; Paired, 1.

The SPEAKER: Forty-six having voted in

the affirmative and ninety-two in the negative, with eleven being absent and two paired, the motion does not prevail.

Thereupon, the Bill was passed to be engrossed.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker, having voted on the prevailing side, I now move the House reconsider its action whereby L. D. 1612 was passed to be engrossed and ask that all 90-odd members vote against me.

The SPEAKER: The gentleman from Lewiston, Mr. Simon, moves that we reconsider our action whereby this Bill was passed to be engrossed. All those in favor will say yes; those opposed will say no.

A Viva Voce Vote being taken, the motion did not prevail.

Sent up for concurrence.

#### Passed to be Enacted

An Act to Reimburse Municipalities for Expenses Incurred in Enforcing Statutes, Ordinances and Regulations Relating to the Operation or use of Motor Vehicles, Streets and Highways (S. P. 183) (L. D. 413) (C. "A" S-137)

An Act to Prevent Cruelty to Animals by Establishing Certain Licensing Categories and Restrictions (S. P. 206) (L. D. 538) (C. "A" S-153)

An Act to Allow Unions to Negotiate on Behalf of Former Employees of a Company with Which the Union is Negotiating (S. P. 319) (L. D. 949) (C. "A" S-151)

An Act to Clarify Inconsistencies in the Liquor Laws (S. P. 436) (L. D. 1367) (H. "A" H-395; S. "A" S-138)

An Act to Facilitate Operation of Department of Conservation Campsites (S. P. 454) (L. D. 1370) (C. "A" S-155)

An Act to Amend the Maine Veterinary Practice Act of 1975 (H. P. 291) (L. D. 388) (C. "A" H-361)

An Act Authorizing the Issuing of Ex Parte Orders by the Courts and Complaint Justices to Allow Humane Agents and Other Authorized Officers to take Possession of Neglected, Mistreated or Injured Animals (H. P. 292) (L. D. 389) (C. "A" H-362)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

#### Enactor

##### Later Today Assigned

An Act to Establish a Marijuana Therapeutic Research Program (H. P. 523) (L. D. 665) (C. "A" H-332)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, Ladies and Gentlemen of the House: The amendment that we have on this bill, L. D. 665, has put an absolute duty on the Department of Human Services in that they will have to analyze for the impurities of the marijuana they will be confiscating. The department has indicated that they do not have the expertise to do this analysis and they do not have the specific equipment that would be necessary. I am checking with the department to see exactly what will be necessary and whether or not it will require a fiscal note. So I would ask that someone table this until later in today's session, until I can resolve that issue.

Thereupon, on motion of Mr. Brenerman of Portland, tabled pending passage to be enacted and later today assigned.

An Act to Permit Juveniles in the Custody of the Department of Mental Health and Corrections to Receive Services from the Department of Human Services (H. P. 560) (L. D. 707) (C. "A" H-365)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Require the Public Utilities Commission to Study the Safe and Proper Decommissioning of Nuclear Generating Facilities in Maine (H. P. 632) (L. D. 783) (C. "A" H-346)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: This bill has been very thoroughly debated. I have no intention of debating it here this morning. I think it is an entirely unnecessary bill and I would ask for a roll call on it.

The SPEAKER: 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 passage to be enacted. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA—Bachrach, Baker, Barry, Benoit, Berry, Berube, Blodgett, Brannigan, Brodeur, Brown, K.C.; Carroll, Carter, D.; Chonko, Churchill, Cloutier, Connolly, Cox, Curtis, Davies, Diamond, Dow, Dutremble, L.; Elias, Fenlason, Fowlie, Gillis, Gowen, Gray, Gwadosky, Hall, Hanson, Hickey, Howe, Hughes, Jacques, E.; Jacques P.; Kane, Kany, Kelleher, Laffin, LaPlante, Locke, Lowe, MacEachern, Mahany, Martin, A.; Masterton, McHenry, McKean, McMahon, Michael, Mitchell, Nadeau, Nelson, M.; Paradis, Paul, Pearson, Post, Reeves, P.; Roide, Sewall, Simon, Tarbell, Theriault, Tierney, Tuttle, Vincent, Violette, Vose, Wood, Wyman, The Speaker.

NAY—Aloupis, Austin, Birt, Bordeaux, Boudreau, Bowden, Brown, K.L.; Bunker, Call, Carrier, Carter, F.; Conary, Cunningham, Damren, Davis, Dellert, Dexter, Doukas, Drinkwater, Dudley, Fillmore, Garsoe, Gavett, Gould, Higgins, Hunter, Hutchings, Immonen, Jackson, Joyce, Kiesman, Lancaster, Leighton, Leonard, Lewis, Lougee, Lund, MacBride, Marshall, Masterman, Maxwell, McPherson, McSweeney, Morton, Nelson, A.; Nelson, N.; Payne, Peterson, Reeves, J.; Rollins, Sherburne, Silsby, Small, Smith, Sprowl, Stetson, Stover, Studley, Torrey, Tozier, Wentworth.

ABSENT—Beaulieu, Brenerman, Brown, A.; Brown, D.; Dutremble, D.; Hobbins, Huber, Jalbert, Lizotte, Matthews, Norris, Peltier, Prescott, Roope, Soulas, Strout, Twitchell, Whitemore.

Yes, 72; No, 61; Absent, 18.

The SPEAKER: Seventy-two having voted in the affirmative and sixty-one in the negative, with eighteen being absent, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

An Act Concerning State Highways and Parking on State Controlled Property (H. P. 1109) (L. D. 1372)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

An Act Relating to Gifts in Contemplation of Death (H. P. 1145) (L. D. 1407) (C. "A" H-363)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. McKEAN: Mr. Speaker, Ladies and Gen-

tleman of the House: I haven't really delved into this bill. I would like some sort of an explanation, especially as it relates to contemplation. What is the difference between a contemplated death and a non-contemplated, death? I think I would like to have the version of what is meant under the federal statutes and what is also meant under the state statutes.

The SPEAKER: The gentleman from Limestone, Mr. McKean has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: Essentially what the amendment and the bill does is define what gifts in contemplation of death means. Essentially what it does, it was a bill suggested by the Bureau of Taxation and it brings us in line with federal statute in that any gift that is made within three years prior to the death of an individual is considered to be a gift in contemplation of death and therefore trying to get away from having to pay the inheritance taxes. So, if you give a gift of \$20,000 to an individual six months before you pass away, then that is considered to be a gift in contemplation of death and taxes have to be paid on it. There is a \$3,000 exemption made—you can give \$3,000 to any one individual and not have to come under the subsection and not have to pay taxes on it.

At the present time, the contemplation of death statutes in the State of Maine are for six months' time, and this would bring us into line with the federal inheritance taxes and I think really a situation which is more reasonable, and put a three-year period before death as the time you would be liable for taxes.

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. McKEAN: Mr. Speaker, Ladies and Gentlemen of the House: I still have a problem with this three-year period of contemplated and non-contemplated death. I think three years is a rather long span of time. This means that if I give a gift to my son or daughter, or whoever may be in my family, and I have a heart attack or I am killed in any way in two years and six months and I was contemplating death when I gave that gift, I don't think I would have contemplated it, I hope I never have to, sooner or later it will come, I don't think this is a fair valuation of contemplation of death and I do believe that it is an awful gooiish way for the state tax assessor to come up with money.

I would like to see a roll call on this, Mr. Speaker.

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: This is not a matter of the Bureau of Taxation trying to come up with a little bit of extra money. There will be about \$50,000 a year coming into the General Fund.

The situation is, under the present Maine statutes if you want to, it is very easy to get around in many instances from having to pay inheritance taxes by simply giving your assets away at a period of time when you reach an elderly age or, in some instances, when you find out that you do, indeed, although it is not an issue that we like to talk about, but you do indeed have a disease which is likely to be terminal.

I think it is an issue on whether or not you really want the state to have on the books a law which gives them the tools that they need so that people are not able to avoid having to pay inheritance taxes. So I would simply hope that you would support the bill.

I would mention that at the hearing, there was no opposition voiced.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I would