

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION
June 15, 1989 to July 1, 1989
Index

The SPEAKER: After reconsideration, the pending question before the House is, shall this Bill become law notwithstanding the objections of the Governor? Pursuant to the Constitution, the vote will be taken by the yeas and nays. This requires a two-thirds vote of the members present and voting. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 147V

YEA - Adams, Aliberti, Bell, Boutilier, Burke, Cahill, M.; Carroll, D.; Carter, Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Conley, Cote, Crowley, Daggett, DiPietro, Dore, Duffly, Dutremble, L.; Erwin, P.; Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hickey, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kefover, Kilkelly, LaPointe, Lawrence, Lisnik, Luther, Macomber, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; O'Dea, O'Gara, Oliver, Paradis, J.; Paul, Pederson, Pineau, Pouliot, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Sheltra, Simpson, Skoglund, Smith, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tracy, Walker, The Speaker.

NAY - Aikman, Allen, Anthony, Ault, Bailey, Begley, Brewer, Butland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Foster, Garland, Greenlaw, Hanley, Hastings, Hepburn, Higgins, Hutchins, Jackson, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Norton, Paradis, E.; Parent, Pendleton, Pines, Reed, Richards, Seavey, Sherburne, Small, Stevens, A.; Stevenson, Strout, B.; Strout, D.; Telow, Tupper, Webster, M.; Wentworth, Whitcomb.

ABSENT - Anderson, Constantine, Farnsworth, Larrivee, Nutting, Paradis, P.; Plourde.
Yes, 89: No, 55: Absent, 7: Paired, 0: Excused, 0.

89 having voted in the affirmative and 55 in the negative with 7 being absent, the Governor's veto was sustained. Sent up for concurrence.

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

June 29, 1989

TO: The Honorable Members of the 114th Maine Legislature

I am returning, without my signature or approval, H.P. 408, L.D. 551, "AN ACT To Allow Recovery for Wrongful Death of an Unborn Viable Fetus."

I share with the proponents of this bill a deep sympathy for those who experience the tragedy of the wrongful death of a fetus. Fortunately, we are not without recourse under present law. In Maine, a woman already has a right to recover for emotional distress, mental anguish, and medical expenses resulting from the loss of her pregnancy. I would also support legislation that would expand this right so long as its use and benefits are clearly restricted in law to a woman or a couple who suffer such a loss.

This bill, while it attempts to help those who have suffered the loss of a viable fetus, raises many disturbing questions that could lead to endless and potentially harmful litigation. Therefore, after careful consideration, I have determined that my concerns far outweigh any possible benefits the legislation might provide.

The bill would change the law dramatically. It would create in Maine's Probate Code an estate for an

unborn, viable fetus, thus permitting a personal representative of the estate to bring a legal action when death of the fetus occurs as a result of a wrongful act. In an effort to address the many concerns raised by the original bill, an amendment was added so that a mother of a fetus could not be held liable for wrongful death. Amendments were also added to restrict causes of action to cases where the mother or father of the fetus is still alive, and to prohibit actions against health care providers in some instances.

Notwithstanding these efforts, there are two major problems with L.D. 551. First, it would introduce serious inconsistencies into the Probate Code by giving status and rights to the estate of a fetus in one of the sections, a concept which is different from and in conflict with other sections. Considerable litigation would be required to determine, for example, how a viable fetus which enjoys rights under the wrongful death section, would be affected by sections such as those governing guardianship, estate of dead persons, appointment of personal representatives of estates, beneficial rights, and rights of inheritance.

Second, the bill leaves unanswered many unsettling questions of interpretation that we should not tolerate in our laws. For instance, the bill leaves open the possibility of someone bringing a cause of action on behalf of the estate of the fetus over the mother's objections. It also greatly increases the potential for more medical malpractice suits for situations which are not explicitly excluded. Finally, because the bill confers a legal personality on a fetus for purposes of wrongful death actions, it greatly expands the opportunities for applying this legal status to other circumstances.

I am supportive of the right to recover for the anguish and loss resulting from the untimely death of a viable fetus as currently allowed under Maine law. I would also support legislation that would expand the right to bring an action if the legislation restricted its use and benefits to the mother or both parents of the fetus.

Because this legislation does not provide such assurances, I respectfully request that you sustain my veto of L.D. 551.

Sincerely,
S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Allow Recovery for Wrongful Death of an Unborn Viable Fetus" (H.P. 408) (L.D. 551) (S. "A" S-274 to C. "A" H-429).

Was read.

On motion of Representative Gwadosky of Fairfield, tabled pending further consideration and later today assigned.

**ENACTOR
Emergency Measure
(Reconsidered)**

An Act Regarding the Employment of 15-year-olds in Public Accommodations for Lodging (H.P. 293) (L.D. 405) (H. "B" H-682 to H. "A" H-654)

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

On motion of Representative Kilkelly of Wiscasset, under suspension of the rules, the House reconsidered its action whereby L.D. 405 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby House Amendment "A" (H-654) as