

MAINE STATE LEGISLATURE

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State of Maine

Daily Edition

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beginning December 3, 2014

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June 12, 2015

The Honorable Heather J.R. Priest
Secretary of the Senate
127th Maine Legislature
Augusta, Maine 04333

Dear Secretary Priest:

The House voted today to insist on its former action whereby it accepted the Minority Ought to Pass as Amended Report of the Committee on Agriculture, Conservation and Forestry on Bill "An Act To Expand the Local Foods Economy" (S.P. 459) (L.D. 1284) and Passage to be Engrossed.

Sincerely,

S/Robert B. Hunt
Clerk of the House

READ and ORDERED PLACED ON FILE.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Assigned (5/28/15) matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To License Outpatient Surgical Abortion Facilities"
H.P. 890 L.D. 1312

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass** (6 members)

Tabled - May 28, 2015, by Senator **BURNS** of Washington

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS** Report, in **NON-CONCURRENCE**

(In House, May 27, 2015, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 28, 2015, Reports **READ**.)

On motion by Senator **BURNS** of Washington, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Washington, Senator Burns.

Senator **BURNS:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'd like to speak briefly about this bill. It was heard in my committee, the Judiciary Committee. This bill, to me, is all about safety. Unfortunately, when the word abortion is used in any language in this institution minds seem to close down, people stop listening, and people start resorting to their previous ideals rather than working through a bill and vetting it

properly. I think that's, I'm sorry to say, what happened to this bill. This bill simply would require that outpatient surgical abortion facilities be licensed by the Department of Health and Human Services and that rules be adopted and established that oversee reasonable operational and safety standards. That's all that the bill does. Currently, this process has no licensing or oversight in this state except for those who happen to be working in the clinic, which would have licensure of course, and those are the people that are running these clinics for profit.

The bill was modeled after a Maryland law that came into effect last year as the result of a tragedy that happened when an 18 year old woman who experienced a botched abortion from a New Jersey physician. The young lady ended up in an Elkton, Maryland mall clinic and subsequently was dropped off at a hospital for treatment. The physician was later found to have operated clinics in several states. I'm sure you've all heard about it in the news. He had faced complaints due to substandard care for the last two decades. He had been barred from the medical profession in both Pennsylvania and New York. That state had no regulations for these clinics at the time. Healthcare givers, not politicians, in the community crafted new legislation for that state. The whole idea of the legislation was not to outlaw abortions but to make them safe when a person goes and makes that decision to go and have an abortion. It was interesting reading the quote from the Deputy Secretary of Public Health in Maryland, Frances Phillips. Mr. Phillips said, "Both sides realized we needed new rules, but we kept the focus on the patient's safety when we did that." The bill passed and, as I said, this particular bill is crafted after that particular bill.

There has been some concern that this bill might have followed the direction that the State of Texas did, which put into effect some rules that were, apparently at least in a lot of people's minds, over-regulatory and actually forced clinics, that otherwise probably should have been left open, to shut down because of the unreasonable rules.

To me, it should not matter whether you are Pro Choice or you are Pro Life or what your philosophy is. It should matter that when a woman decides to make this decision, for whatever her personal reasoning is, she can go to a clinic that is properly regulated and overseen by somebody other than the people working there for profit. That's what I certainly would want for my family. I know that's what you would want for your family. Abortion is the law of the land. This does not prevent or hinder women from making that choice, but it would provide a safety mechanism so that when they do make that choice they will be going to a facility that was overseen by the Department of Health and Human Services and I think that makes a lot of sense in this day and age. Thank you very much, Mr. President.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to the pending motion on L.D. 1312 and I urge you to join me. In the public hearing before the Judiciary Committee L.D. 1312 had very few testifying in support of the bill, none of whom expressed any experience with abortions. In opposition were many doctors, medical students, counselors, publicly assessable abortion providers, even clergy. One medical resident had sought out residencies in New England population centers of Boston and New York City to gain experience. She was very knowledgeable,

well grounded, and effective at explaining what she knew and answering questions for the committee. She explained how identical procedures are performed in doctor's offices all the time and how procedures in dentist's offices are riskier than those in the facilities this bill seeks to regulate. Being treated by licensed medical providers is the key to safety in women's reproductive health issues, whether in a clinic or in an OBGYN doctor's office. Those licensed providers already have oversight because abortion providers are already regulated and licensed by the Maine Board of Medicine. That is true, whether in the doctor's office or in a clinic.

Furthermore, health centers that receive federal Family Planning funding must abide by federal regulations that call for annual inspections by the state and federal inspections every three years. As a matter of fact, they have an excellent safety record of fewer than 1% complications from abortion procedures and a very small fraction of those that are serious complications.

This bill only targets the three publicly accessible abortion providers in Maine: Planned Parenthood, Mable Wadsworth, and the Family Planning Association. They are all members of the National Abortion Federation and must adhere to their guidelines. Additionally, the providers base their medical care on the expert recommendations of the Center for Disease Control and Prevention and the American College of Obstetricians and Gynecologists. Why single out these clinics for facility regulations? Why should they be treated differently than the doctor's offices and dental offices where procedures of similar or greater risks are performed? The simple answer is they shouldn't. The forthright answer is that the reason for that targeting isn't safety at all, it is politics. L.D. 1312 was written by politicians for a political agenda, not by medical experts. The problem is, indeed, not listening to the doctors, nurses, medical students, and women's reproductive health clinics and to the facts. Even worse, this bill does not say what obstacles will be imposed for a woman seeking access to legal medical care for her reproductive health needs. There are no parameters in the bill, giving DHHS free rein regarding what aspects of these publicly accessible abortion provider facilities will be regulated. However, if other states are any indication, it would mean onerous and non-safety related restrictions. In other states clinics could not afford to comply and were forced to close. When that happens women lose access to safe and legal medical treatment, which is the real agenda of L.D. 1312. That loss of access would lead women to seeking alternatives, likely less safe ones.

I know that for my two daughters and three granddaughters, as they grow up, I want them to have access to good healthcare from a licensed medical provider, such as a doctor, nurse, or physician's assistant, for all their needs just as every woman in this state deserves. We all want to protect patient's health and safety, but this bill does nothing to insure safety and everything to restrict access to safe and legal reproductive healthcare. If you care about women's health and safety, if you value the opinions of the Maine Medical Association and the Maine Section of the American College of Obstetricians and Gynecologists in reproductive health matters, then follow my light. Thank you, Mr. President.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Penobscot, Senator Gratwick.

Senator **GRATWICK:** Thank you very much, Mr. President. Ladies and gentlemen of the Senate, I rise today to speak about

this issue in the point of view of a medical care provider. Very simply, we all want safety. I want to be safe when I do my procedures for my patients. Most assuredly, my patients want to be safe when they come to have any procedure. We also want to be cost effective and we want it to be given at the proper time. There are a number of different procedures that are done as an outpatient and I think that's as it should be. You do not want to have to go to complicated hospital expensive in-patient facilities for vasectomies, cystoscopies, IUD placement, sigmoidoscopies, and, my favorite and the one you'll all like too, esophagogastroduodenoscopy. I would ask you all to say that backwards and forwards very rapidly. In other words, there are many procedures that are done, that can be done perfectly well, as an outpatient, and safely. An example from my practice, being an arthritis doctor, I do something called arthrocentesis, taking fluid out of a joint to see what's wrong with that joint. When I do it in my office the material cost of that, getting a syringe and needle and alcohol and betadine, is about \$3.25. When I go to the hospital and have exactly the same material, procedure, it's \$187 for exactly the same thing. Am I more safe in my office or more safe doing it in the hospital? I must say I think it's about the same. The risk of what I do there is roughly 1 in 20,000 people has a complication. If we are to single out abortions out of that whole list of other procedures, there's probably about 30 common outpatient procedures done, I think we are doing an injustice to the other 29. In other words, to be consistent we should either do all or none. The system, as it's working now, is perfectly adequate. Therefore, the Ought Not to Pass seems very appropriate to me at this time. Thank you, Mr. President.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Cumberland, Senator Breen.

Senator **BREEN:** Thank you, Mr. President. I rise to oppose the pending motion on the Floor. With all due respect to the good Senator from Washington, I want to be clear that this bill will not promote safety for women for seeking necessary medical care. What this bill would do is further place government in the position of interfering with decisions that belong between a woman and her medical professional, not between a woman and her legislator. What this bill would do is cause safe, high quality, and needed health centers to close. What this bill would do is restrict access to legal, safe medical services. Right now, with Maine's current regulations, there's already strict oversight of all abortion professionals, regardless of where they practice. We have a combination of effective laws already that require inspections, investigations, and licensing. As you've heard already, we already have an excellent safety record, 99% safety. As you also heard from the Senator from Lincoln County, this bill specifically targets three outpatient providers; Maine Family Planning, Maple Wadsworth, and Planned Parenthood. The truth is that abortions are not just provided in these health centers. They are also provided in hospitals and doctor's offices. The truth is that abortions and many other medical procedures are performed in doctor's offices every day. Procedures like vasectomies, cystoscopies, skin biopsies, and I'll stop there because I don't want to mess up my pronunciations. I'm not as good as the good Senator from Bangor. Our current system is working. Abortions and these procedures are done safely now. The number of unintended pregnancies in Maine is continuing to go down, as is the number of abortions. What this bill would do is ignore the advice of the Maine Medical Association and the Maine Chapter

of American College of Obstetrics and Gynecology, who opposed the bill in committee precisely because it would hurt women by blocking their access to safe, legal medical care. What this bill would not do is protect women's health and safety. For the health and safety of Maine women, I urge your opposition to the pending motion. Thank you.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Washington, Senator Burns.

Senator **BURNS:** Thank you, Mr. President. Ladies and gentlemen, I won't prolong this very long, but I do want to respond to a couple of things. I guess the first one is that I don't think we know exactly how safe the abortions that are being performed in this state are because there aren't adequate statistics to tell us, only what the self-reporters tell us. There are not federal inspections being done. The State of Maine's law requires that the number of abortions that are performed in this state be reported to the CDC. In 2012 there was at least six requests that went out to one of these major providers that's been mentioned here several times, six requests for those numbers which failed to be forthcoming. Even the Attorney General insisted that those numbers be provided and they still were not forthcoming. That concerns me. I don't have assurance that all these are being done in a safe, appropriate manner when I'm only hearing from those people who profit from this venture. I'd just add that 26 other states have regulations over their abortion providers. Maine should be the 27th to give that reassurance. Thank you very much.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you, Mr. President. Men and women of the Senate, if that's what would lead to safety then I would submit that you need to be asking the same question about your next root canal or wisdom tooth extraction or joint injection or tubal ligation, abscess incision and drainage, colposcopy, IUD placement, sigmoidoscopy, hemorrhoid banding, skin biopsy, lipoma removal, dilation and curettage, hysteroscopy, or, even as the good doctor said, and an esophagogastroduodenoscopy. Yet we don't regulate the facilities for those, we regulate the medical providers themselves; the doctors, nurses, and nurse practitioners. They are licensed in Maine. They are overseen by the Maine Board of Medicine. That is how we insure the safety of their practices and that's exactly, in all fairness, how we should be regulating, as we are today already, the safety of these clinics. They should not be singled out for the facilities to be licensed, to have further restrictions on those facilities placed legally upon them, as we do not do for dentist's offices, for doctor's offices. That's not the way to get to safety. Please join me in opposing the pending motion so we can actually look out for the safety of women and access to safe medical treatment. Thank you.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Cumberland, Senator Volk.

Senator **VOLK:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I won't speak long. I feel like we're a little bit schizophrenic here in this state because it's interesting to hear the numbers of the procedures that happen in facilities that are not regulated and are not inspected. I remember being

impacted by that in the testimony in the committee. Then again, there are an awful lot of other places that we do regulate. We license hair salons, bed and breakfasts, food establishments, campgrounds, daycares, cottage industry kitchens in personal homes, as well as tattoo parlors and tanning salons. With all of the entities we license in order to insure public health for Maine citizens, it seems like it's a little bit strange, to me, that clinics that provide surgical procedures on a routine basis are not subject to licensure and oversight. I just want to note that this bill is much, much smaller in scope than the bill that received so much attention in Texas about a year ago and that law actually was recently upheld just this week, I believe, on the 10th by a federal appeals court. I'm not saying that this law is really even to be compared to that law. That law's much more restrictive. We would expect that, given the safety record that we know of the clinics performing abortions in the state of Maine, they would probably very, very easily meet any sort of licensing standards which would be set by the department and would be major substantive, therefore voted on by the committee. Thank you very much.

THE PRESIDENT PRO TEMPORE: The pending question before the Senate is the motion by the Senator from Washington, Senator Burns to Accept the Minority Ought to Pass Report, in Non-Concurrence. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#217)

YEAS: Senators: BRAKEY, BURNS, COLLINS, CUSHING, CYRWAY, DAVIS, EDGECOMB, HAMPER, MCCORMICK, THIBODEAU, VOLK, WHITTEMORE, WILLETTE, THE PRESIDENT PRO TEMPORE - GARRETT P. MASON

NAYS: Senators: ALFOND, BAKER, BREEN, DIAMOND, DILL, DUTREMBLE, GERZOFKY, GRATWICK, HASKELL, HILL, JOHNSON, KATZ, LANGLEY, LIBBY, MILLETT, MIRAMANT, PATRICK, ROSEN, SAVIELLO, VALENTINO, WOODSOME

14 Senators having voted in the affirmative and 21 Senators having voted in the negative, the motion by Senator **BURNS** of Washington to **ACCEPT** the Minority **OUGHT TO PASS** Report, in **NON-CONCURRENCE, FAILED**.

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (6/8/15) matter: