



SPONSOR: Sen. Townsend & Sen. Henry & Rep. Heffernan &
Rep. Longhurst
Sens. Bushweller, Cloutier, Hansen, McDowell, Poore,
Sokola; Reps. Baumbach, Bentz, Hudson, Kowalko,
Lynn, Osienski, Paradee, B. Short, Viola

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 5

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE CODIFYING U.S. SUPREME COURT PRECEDENT
RELATING TO THE TERMINATION OF PREGNANCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1702. Definitions.

4 The following definitions apply to this chapter unless otherwise expressly stated or implied by the context.

5 (18) "Viability" means the point in a pregnancy when, in a physician's good faith medical judgment based on
6 the factors of a patient's case, there is a reasonable likelihood of the fetus's sustained survival outside the uterus
7 without the application of extraordinary medical measures.

8 Section 2. Amend § 1790, Title 24 of the Delaware Code by making deletions as shown by strike through and
9 insertions as shown by underline as follows:

10 § 1790. ~~Limitation on termination of human pregnancy; annual report. Termination of pregnancy before viability~~
11 ~~not prohibited; termination of pregnancy after viability limited.~~

12 (a) A physician may terminate, assist in the termination of, or attempt the termination of a human pregnancy
13 before viability. No person shall terminate or attempt to terminate or assist in the termination or attempt at termination of a
14 ~~human pregnancy otherwise than by birth, except that a physician licensed by this State may terminate a human pregnancy~~
15 ~~or aid or assist or attempt a termination of a human pregnancy if such procedure takes place in a hospital accredited by a~~
16 ~~nationally recognized medical or hospital accreditation authority, upon authorization by a hospital abortion review authority~~
17 ~~appointed by the hospital if 1 or more of the following conditions exist:~~

18 ~~(1) Continuation of the pregnancy is likely to result in the death of the mother;~~

(2) There is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation;

(3) The pregnancy resulted from:

a. Incest, or

b. A rape or unlawful sexual intercourse in the first or second degree committed as a result of force or bodily harm or threat of force or bodily harm, and the Attorney General of this State has certified to the hospital abortion review authority in writing over the Attorney General's signature that there is probable cause to believe that the alleged rape or unlawful sexual intercourse in the first or second degree did occur, except that during the first 48 hours after the alleged rape or unlawful sexual intercourse in the first or second degree no certification by the Attorney General shall be required;

(4) Continuation of the pregnancy would involve substantial risk of permanent injury to the physical or mental health of the mother.

(b) A physician may not terminate, attempt to terminate, or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth after viability, unless, in the good faith medical judgment of the physician, the termination is necessary for the protection of the woman's life or health or in the event of a fetal anomaly for which there is not a reasonable likelihood of the fetus's sustained survival outside the uterus without extraordinary medical measures. ~~In no event shall any physician terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth unless:~~

~~(1) Not more than 20 weeks of gestation have passed (except in the case of a termination pursuant to paragraph (a)(1) of this section or where the fetus is dead); and~~

~~(2) Two physicians licensed by this State, 1 of whom may be the physician proposed to perform the abortion, certify to the abortion review authority of the hospital where the procedure is to be performed that they are of the opinion, formed in good faith, that 1 of the circumstances set forth in subsection (a) of this section exists (except that no such certification is necessary for the circumstances set forth in paragraph (a)(3)b. of this section); where the personal physician of an expectant mother claims that she has a mental or emotional condition, a psychiatrist licensed by this State shall, in addition to the personal physician, certify to the abortion review authority of the hospital where such procedure is to be performed that the physician is of the opinion, formed in good faith, that 1 of the circumstances set forth in subsection (a) of this section exists (except that no such certification is necessary for the circumstances set forth in paragraph (a)(3)b. of this section); and~~

(3) In the case of an unmarried female under the age of 18 or mentally ill or incompetent, there is filed with the hospital abortion review authority the written consent of the parents or guardians as are then residing in the same household with the consenting female, or, if such consenting female does not reside in the same household with either of her parents or guardians, then with the written consent of 1 of her parents or guardians.

(c) The hospital abortion review authority of each hospital in which a procedure or procedures are performed pursuant to this section shall, on or before March 1 in each year, file with the Department of Health and Social Services a written report of each such procedure performed pursuant to the authorization of such authority during the preceding calendar year setting forth grounds for each such authorization but not including the names of patients aborted.

Section 3. Amend § 1793, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1793. Residency requirements; exceptions.

(a) No person shall be authorized to perform a termination of a human pregnancy within the State upon a female who has not been a resident of this State for a period of at least 120 days next before the performance of an operative procedure for the termination of a human pregnancy.

(b) This section shall not apply to such female who is gainfully employed in this State at the time of conception, or whose spouse is gainfully employed in this State at the time of conception or to such female who has been a patient, prior to conception, of a physician licensed by this State, or to such female who is attempting to secure the termination of her pregnancy for the condition specified in § 1790(a)(1) of this title. [Repealed.]

Section 4. Amend § 1794, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1794. Consent prior to termination of human pregnancy.

(a) No abortion may be performed unless the woman submitting to the abortion first gives her written consent to the abortion stating that she freely and voluntarily consents to the abortion and that she has received a full explanation of the abortion procedure and effects, including, but not limited to, the following:

(1) The abortion procedure to be utilized.

(2) The probable effects of the abortion procedure on the woman, including the effects on her child-bearing ability and effects on possible future pregnancies.

(3) The facts of fetal development as of the time the proposed abortion is to be performed.

(4) The risks attendant to the procedure.

77 (5) ~~An explanation of the reasonable alternatives to abortion and of the reasonable alternative procedures or~~
78 ~~methods of abortion.~~

79 (b) ~~No abortion may be performed on a woman within 24 hours after giving written consent pursuant to subsection~~
80 ~~(a) of this section unless, in the opinion of her treating physician, an emergency situation presenting substantial danger to~~
81 ~~the life of the woman exists.~~

82 ~~In the event a woman's treating physician determines an abortion is necessary because an emergency situation~~
83 ~~presenting substantial danger to the life of the woman existed and such woman is unable to give her consent to an abortion,~~
84 ~~an abortion may be performed on such woman. [Repealed. Informed consent for a procedure under this subchapter is~~
85 ~~required by § 4408-1.0 through 10.0, Title 16 of the Delaware Administrative Code.]~~

86 Section 5. Nothing in this Act may be construed to affect the continued effectiveness of the Parental Notice of
87 Abortion Act, Subchapter VIII of Chapter 17 of Title 24 of the Delaware Code.

SYNOPSIS

The United States Supreme Court's decisions in Roe v. Wade and subsequent cases established that access to abortion is a constitutional right and that states may not prohibit abortion prior to viability. As a result of these decisions, and the exercise of prosecutorial discretion by the Attorney General, see Del. Op. Att'y Gen. No. 73-030, § III (Apr. 12, 1973), the Delaware Code's prohibitions against abortion are unconstitutional, and thus unenforceable.

This Substitute makes Delaware's laws on abortion consistent with the scope of the right protected by the United States Constitution and the practice in Delaware for the past 43 years. In doing so, this Act permits the termination of a pregnancy prior to viability, to protect the life or health of the mother, or in the event of serious fetal anomaly.

This Substitute differs from Senate Bill No. 5 as follows:

- (1) It clarifies lines 31 through 34 related to fetal anomalies.
- (2) It notes, on lines 79 through 81, that informed consent for a procedure under this subchapter is required by § 4408-1.0 through 10.0, Title 16 of the Delaware Administrative Code.
- (3) It makes clear that nothing in this Substitute is to be construed to affect the continued effectiveness of the Parental Notice of Abortion Act, Subchapter VIII of Chapter 17 of Title 24 of the Delaware Code.

Author: Senator Townsend