

HB 483-FN – AS INTRODUCED

2013 SESSION

13-0723
01/09

HOUSE BILL **483-FN**

AN ACT relative to information regarding abortion.

SPONSORS: Rep. Cormier, Belk 8; Rep. Peterson, Hills 21

COMMITTEE: Judiciary

ANALYSIS

This bill requires the physician who performs an abortion, or the referring physician, to provide the pregnant woman with certain information at least 24 hours prior to the abortion, and to obtain her consent that she has received such information.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to information regarding abortion.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Abortion Information Act. Amend RSA by inserting after chapter 132-A the
2 following new chapter:

3 CHAPTER 132-B

4 ABORTION INFORMATION ACT

5 132-B:1 Title. This act shall be known as the “Abortion Information Act.”

6 132-B:2 Legislative Findings and Purposes.

7 I. The general court finds that:

8 (a) It is essential to the psychological and physical well-being of a woman considering an
9 abortion that she receive complete and accurate information on abortion and its alternatives.

10 (b) The knowledgeable exercise of a woman’s decision to have an abortion depends on the
11 extent to which she receives sufficient information to make an informed choice between 2
12 alternatives: giving birth or having an abortion.

13 (c) Adequate and legitimate informed consent includes information which “relates to the
14 consequences to the fetus.” *Planned Parenthood v. Casey*, 505 U.S. 833, 882-883 (1992).

15 (d) Many abortions are performed in clinics devoted solely to providing abortions and
16 family planning services. Most women who seek abortions at these facilities do not have any
17 relationship with the physician who performs the abortion, before or after the procedure. They do
18 not return to the facility for post-surgical care. In most instances, the woman’s only actual contact
19 with the physician occurs simultaneously with the abortion procedure, with little opportunity to
20 receive counseling concerning her decision.

21 (e) The decision to abort “is an important, and often a stressful one, and it is desirable
22 and imperative that it be made with full knowledge of its nature and consequences.” *Planned*
23 *Parenthood v. Danforth*, 428 U.S. 52, 67 (1976).

24 (f) “The medical, emotional, and psychological consequences of an abortion are serious
25 and can be lasting...” *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

26 (g) Abortion facilities or providers often offer only limited or impersonal counseling
27 opportunities.

28 (h) Many abortion facilities or providers hire untrained and unprofessional “counselors”
29 to provide pre-abortion counseling, but whose primary goal is actually to “sell” or promote abortion
30 services.

31 II. Based on the findings in paragraph I, the purposes of this chapter is to:

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1 (a) Ensure that every woman considering an abortion receives complete information on
2 abortion and its alternatives and that every woman submitting to an abortion does so only after
3 giving her voluntary and fully-informed consent to the abortion procedure.

4 (b) Reduce “the risk that a woman may elect an abortion, only to discover later, with
5 devastating psychological consequences, that her decision was not fully informed.” *Planned*
6 *Parenthood v. Casey*, 505 U.S. 833, 882 (1992).

7 (c) Adopt the construction of the term “medical emergency” accepted by the U.S.
8 Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

9 132-B:3 Definitions. In this chapter:

10 I. “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any
11 other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy
12 of a woman with knowledge that the termination by those means will with reasonable likelihood
13 cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with
14 the intent to:

15 (a) Save the life or preserve the health of an unborn child;

16 (b) Remove a dead unborn child caused by spontaneous abortion; or

17 (c) Remove an ectopic pregnancy.

18 II. “Complication” means any adverse physical or psychological condition arising from the
19 performance of an abortion, which includes but is not limited to: uterine perforation, cervical
20 perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy,
21 incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic
22 pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism,
23 coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free
24 fluid in the abdomen, adverse reactions to anesthesia and other drugs; any psychological or
25 emotional complications such as depression, anxiety, and sleeping disorders; and any other “adverse
26 event” as defined by the Food and Drug Administration (FDA) criteria provided in the Medwatch
27 Reporting System. The department may further define “complication.”

28 III. “Conception” means the fusion of a human spermatozoon with a human ovum.

29 IV. “Department” means the department of health and human services.

30 V. “Facility” or “medical facility” means any public or private hospital, clinic, center, medical
31 school, medical training institution, health care facility, physician’s office, infirmary, dispensary,
32 ambulatory surgical treatment center, or other institution or location wherein medical care is
33 provided to any person.

34 VI. “First trimester” means the first 12 weeks of gestation.

35 VII. “Gestational age” means the time that has elapsed since the first day of the woman’s
36 last menstrual period.

37 VIII. “Hospital” means a facility licensed under RSA 151.

1 IX. “Medical emergency” means that condition which, on the basis of the physician’s good
2 faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate
3 the immediate termination of her pregnancy to avert her death or for which a delay will create
4 serious risk of substantial and irreversible impairment of a major bodily function.

5 X. “Physician” means any person licensed under RSA 329. The term includes medical
6 doctors and doctors of osteopathy.

7 XI. “Pregnant” or “pregnancy” means that female reproductive condition of having an
8 unborn child in the woman’s uterus.

9 XII. “Qualified person” means an agent of the physician who is a psychologist, licensed social
10 worker, licensed professional counselor, registered nurse, or physician.

11 XIII. “Unborn child” means the offspring of human beings from conception until birth.

12 132-B:4 Informed Consent Requirement. No abortion shall be performed or induced without the
13 voluntary and informed consent of the woman upon whom the abortion is to be performed or
14 induced. Except in the case of a medical emergency, consent to an abortion is voluntary and
15 informed if and only if:

16 I. At least 24 hours before the abortion, the physician who is to perform the abortion or the
17 referring physician has informed the woman, orally and in person, of the following:

18 (a) The name of the physician who will perform the abortion;

19 (b) Medically-accurate information that a reasonable patient would consider material to
20 the decision of whether or not to undergo the abortion, including (1) a description of the proposed
21 abortion method; (2) the immediate and long-term medical risks associated with the proposed
22 abortion method including, but not limited to, the risks of infection, hemorrhage, cervical or uterine
23 perforation, and danger to subsequent pregnancies; and (3) alternatives to the abortion;

24 (c) The probable gestational age of the unborn child at the time the abortion is to be
25 performed;

26 (d) The probable anatomical and physiological characteristics of the unborn child at the
27 time the abortion is to be performed; and

28 (e) The medical risks associated with carrying her child to term.

29 II. At least 24 hours before the abortion, the physician who is to perform the abortion, the
30 referring physician, or a qualified person has informed the woman, orally and in person, that:

31 (a) Medical assistance benefits may be available for prenatal care, childbirth, and
32 neonatal care, and that more detailed information on the availability of such assistance is contained
33 in the printed materials.

34 (b) The printed materials shall list agencies that offer alternatives to abortion.

35 (c) The father of the unborn child is liable to assist in the support of this child, even in
36 instances where he has offered to pay for the abortion. In the case of rape or incest, this information
37 may be omitted.

1 (d) She is free to withhold or withdraw her consent to the abortion at any time without
2 affecting her right to future care or treatment and without the loss of any state or federally-funded
3 benefits to which she might otherwise be entitled.

4 III. At least 24 hours before the abortion, the woman is given a copy of the printed
5 materials. If the woman is unable to read the materials, they shall be read to her. If the woman
6 asks questions concerning any of the information or materials, answers shall be provided to her in a
7 language she can understand.

8 IV. Prior to the abortion, the woman certifies in writing on a checklist form provided or
9 approved by the department that the printed information required to be provided under RSA 132-B:5
10 has been provided.

11 V. Except in the case of a medical emergency, the physician who is to perform the abortion
12 shall receive and sign a copy of the written certification prescribed in paragraph IV of this section
13 prior to performing the abortion. The physician shall retain a copy of the checklist certification form
14 in the woman's medical record.

15 VI. In the event of a medical emergency requiring an immediate termination of pregnancy,
16 the physician who performed the abortion shall clearly certify in writing the nature of the medical
17 emergency and the circumstances which necessitated the waiving of the informed consent
18 requirements of this chapter. This certification shall be signed by the physician who performed the
19 emergency abortion, and shall be permanently filed in both the records of the physician performing
20 the abortion and the records of the facility where the abortion takes place.

21 VII. A physician shall not require or obtain payment for a service provided to a patient who
22 has inquired about an abortion or scheduled an abortion until the expiration of the 24-hour reflection
23 period required in this section.

24 132-B:5 Publication of Materials.

25 I. The department shall cause to be published printed materials in English and Spanish
26 within 90 days after this chapter becomes law.

27 II.(a) On an annual basis, the department shall review and update, if necessary, the
28 following easily comprehensible printed materials:

29 (1) Geographically indexed materials that inform the woman of public and private
30 agencies and services available to assist a woman through pregnancy, upon childbirth, and while her
31 child is dependent, including but not limited to adoption agencies.

32 (2) A comprehensive list of the agencies, a description of the services they offer, and
33 the telephone numbers and addresses of the agencies, and shall inform the woman about available
34 medical assistance benefits for prenatal care, childbirth, and neonatal care.

35 (b) The department shall ensure that the materials described in this section are
36 comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency
37 or service described in this section.

1 (c) The materials shall state that it is unlawful for any individual to coerce a woman to
2 undergo an abortion and that if a minor is denied financial support by the minor’s parents, guardian,
3 or custodian due to the minor’s refusal to have an abortion performed, the minor shall be deemed
4 emancipated for the purposes of eligibility for public-assistance benefits, except that such benefits
5 may not be used to obtain an abortion. The materials shall also state that any physician who
6 performs an abortion upon a woman without her informed consent may be liable to her for damages
7 in a civil action at law and that the law permits adoptive parents to pay costs of prenatal care,
8 childbirth, and neonatal care. The materials shall also include the following statement:

9 *“There are many public and private agencies willing and able to help you to carry your child to*
10 *term, and to assist you and your child after your child is born, whether you choose to keep your child*
11 *or to place her or him for adoption. The state of New Hampshire strongly urges you to contact one or*
12 *more of these agencies before making a final decision about abortion. The law requires that your*
13 *physician or his or her agent give you the opportunity to call agencies like these before you undergo an*
14 *abortion.”*

15 132-B:6 Medical Emergencies. When a medical emergency compels the performance of an
16 abortion, the physician shall inform the woman, before the abortion if possible, of the medical
17 indications supporting the physician’s judgment that an immediate abortion is necessary to avert her
18 death or that a 24-hour delay will cause substantial and irreversible impairment of a major bodily
19 function.

20 132-B:7 Civil Penalties.

21 I. In addition to any and all remedies available under the common or statutory law of this
22 state, failure to comply with the requirements of this chapter shall:

- 23 (a) Provide a basis for a civil malpractice action for actual and punitive damages.
24 (b) Provide a basis for a professional disciplinary action under RSA 329.

25 II. No civil liability may be assessed against the female upon whom the abortion is
26 performed.

27 III. When requested, the court shall allow a woman to proceed using solely her initials or a
28 pseudonym and may close any proceedings in the case and enter other protective orders to preserve
29 the privacy of the woman upon whom the abortion was performed.

30 IV. If judgment is rendered in favor of the plaintiff, the court shall also render judgment for
31 a reasonable attorney’s fee in favor of the plaintiff against the defendant.

32 V. If judgment is rendered in favor of the defendant and the court finds that the plaintiff’s
33 suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable
34 attorney’s fees in favor of the defendant against the plaintiff.

35 132-B:8 Construction. Nothing in this chapter shall be construed as creating or recognizing a
36 right to abortion. It is not the intention of this law to make lawful an abortion that is currently
37 unlawful.

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1 132-B:9 Right of Intervention. The general court, by joint resolution, may appoint one or more
2 of its members, who sponsored or cosponsored this chapter in his or her official capacity, to intervene
3 as a matter of right in any case in which the constitutionality of this chapter is challenged.

4 132-B:10 Severability. If any provision of this chapter or the application thereof to any person
5 or circumstance is held invalid, the invalidity does not affect other provisions or applications of the
6 chapter which can be given effect without the invalid provisions or applications, and to this end the
7 provisions of this chapter are severable.

8 2 Effective Date. This act shall take effect January 1, 2014.

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HB 483-FN - FISCAL NOTE

AN ACT relative to information regarding abortion.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.