

HB 562-FN - AS INTRODUCED

2023 SESSION

23-0260

05/04

HOUSE BILL ***562-FN***

AN ACT requiring informed consent prior to receiving an abortion procedure.

SPONSORS: Rep. Testerman, Merr. 3; Rep. Sellers, Graf. 18; Rep. Peternel, Carr. 6

COMMITTEE: Judiciary

ANALYSIS

This bill establishes the women's right to know act, regarding the type of informed consent required prior to receiving an abortion procedure.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT requiring informed consent prior to receiving an abortion procedure.

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

1 1 New Chapter; Women's Right to Know Act. Amend RSA by inserting after chapter 132-A the
2 following new chapter:

3 CHAPTER 132-B

4 WOMEN'S RIGHT TO KNOW ACT

5 132-B:1 Definitions. In this chapter:

6 I. "Abortion" means the same as that term is defined in RSA 329:43, I.

7 II. "Chemical abortion" means the use or prescription of an abortion-inducing drug
8 dispensed with the intent to cause an abortion.

9 III. "Medical emergency" means any condition which, in the reasonable medical judgment of
10 the patient's physician, so complicates the medical condition of a pregnant female as to necessitate
11 the immediate termination of her pregnancy to avert her death or for which a delay will create
12 serious risk of substantial and irreversible physical impairment of a major bodily function, not
13 including psychological or emotional conditions. No condition shall be deemed a medical emergency
14 if based on a claim or diagnosis that the female will engage in conduct which she intends to result in
15 her death or in substantial and irreversible physical impairment of a major bodily function.

16 IV. "Physician" means any person licensed under RSA 329. The term includes medical
17 doctors and doctors of osteopathy.

18 V. "Probable gestational age of the embryo or fetus" means what, in the judgment of the
19 physician, will with reasonable probability be the gestational age of the embryo or fetus at the time
20 the abortion is planned to be performed.

21 132-B:2 Informed Consent. No abortion shall be performed in this state except with the
22 voluntary and informed consent of the female upon whom the abortion is to be performed. Except in
23 the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

24 I. The female is told the following, by telephone or in person, by the physician or the licensed
25 medical professional to whom the responsibility has been delegated by the physician who is to
26 perform the abortion at least 24 hours before the abortion:

27 (a) The particular medical risks associated with the particular abortion procedure to be
28 employed, including, when medically accurate, the risks of infection, hemorrhage, danger to
29 subsequent pregnancies, and infertility;

30 (b) The probable gestational age of the embryo or fetus at the time the abortion is to be
31 performed;

1 (c) The medical risks associated with carrying her child to term; and

2 (d) If a chemical abortion involving the 2-drug process of mifepristone is initiated and
3 then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be
4 informed that:

5 (1) It may be possible to counteract the intended effects of a mifepristone chemical
6 abortion by taking progesterone if the female changes her mind, before taking the second drug, but
7 this process has not been approved by the Food and Drug Administration.

8 (2) After the first drug involved in the 2-drug process is dispensed in a mifepristone
9 chemical abortion, the physician or agent of the physician shall provide written medical discharge
10 instructions to the pregnant female which shall include the statement:

11 "If you change your mind and decide to try to counteract the intended effects of a mifepristone
12 chemical abortion, if the second pill has not been taken, please consult with your physician.

13 (A) You might experience a complete abortion without ever taking misoprostol;

14 (B) You might experience a missed abortion, which means the fetus is no longer
15 viable, but the fetus did not leave your body; or

16 (C) It is possible that your pregnancy may continue; and

17 (D) You should consult with your physician."

18 (e) The female shall certify, as part of the informed consent process for any medical
19 procedure, that she has been informed about the above possibilities regarding a chemical abortion.

20 (f) Notwithstanding any law to the contrary, a physician acting in conformity with the
21 informed consent provisions of this subparagraph relating to the possibility of counteracting the
22 intended effects of a chemical abortion, or a physician prescribing a non-Food and Drug
23 Administration approved drug therapy to counteract a chemical abortion is not liable for any loss,
24 damage, physical injury, or death arising from any information provided by the physician related to
25 counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food and
26 Drug Administration approved drug therapy to counteract a chemical abortion.

27 (g) The information required by this paragraph may be provided by telephone without
28 conducting a physical examination or tests of the patient, in which case the information required to
29 be provided may be based on facts supplied by the female to the physician or other licensed health
30 care professional to whom the responsibility has been delegated by the physician and whatever other
31 relevant information is reasonably available to the physician or other licensed health care
32 professional to whom the responsibility has been delegated by the physician. It may not be provided
33 by a tape recording, but must be provided during a consultation in which the physician or licensed
34 health care professional to whom the responsibility has been delegated by the physician is able to
35 ask questions of the female and the female is able to ask questions of the physician or the licensed
36 health care professional to whom the responsibility has been delegated by the physician.

1 (h) If a physical examination, tests or the availability of other information to the
2 physician or other licensed health care professional to whom the responsibility has been delegated by
3 the physician subsequently indicate, in the medical judgment of the physician or the licensed health
4 care professional to whom the responsibility has been delegated by the physician, a revision of the
5 information previously supplied to the patient, that revised information may be communicated to the
6 patient at any time before the performance of the abortion procedure.

7 (i) Nothing in this section may be construed to preclude provision of required
8 information in a language understood by the patient through a translator.

9 II. The female is informed, by telephone or in person, by the physician who is to perform the
10 abortion, or by an agent of the physician, at least 24 hours before the abortion procedure:

11 (a)(1) That medical assistance benefits may be available for prenatal care, childbirth,
12 and neonatal care through governmental or private entities;

13 (2) That the father, if his identity can be determined, is liable to assist in the support
14 of her child based upon his ability to pay even in instances in which the father has offered to pay for
15 the abortion;

16 (3) That she has the right to review the printed materials described in RSA 132-B:3,
17 that these materials are available on a state-sponsored website and the website address; and

18 (4) That the female will be presented with a form which she will be required to
19 execute prior to the abortion procedure, and that the form will inform her of the opportunity to view
20 the ultrasound image and her right to view or decline to view the ultrasound image, if an ultrasound
21 is performed.

22 (b) The physician or an agent of the physician shall orally inform the female that the
23 materials have been provided by the state of New Hampshire department of health and human
24 services and that they describe the embryo or fetus and list agencies and entities which offer
25 alternatives to abortion.

26 (c) If the female chooses to view the materials other than on the website, then they shall
27 either be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours
28 before the abortion by first class mail in an unmarked envelope.

29 (d) The information required by this paragraph may be provided by a tape recording if
30 provision is made to record or otherwise register specifically whether the female does or does not
31 choose to have the printed materials given or mailed to her.

32 III.(a) The form required in subparagraph II(a)(4) shall include the following information:

33 (1) It is a female's decision whether or not to undergo any ultrasound imaging
34 procedure in consultation with her health care provider;

35 (2) If an ultrasound is performed in conjunction with the performance of an abortion
36 procedure, the female has the right to view or to decline to view the image; and

1 (3) That the female has been previously informed of her opportunity to view the
2 ultrasound image and her right to view or decline to view the ultrasound image.

3 (b) The female shall certify her choice on this form prior to the abortion procedure being
4 performed.

5 IV. The female shall certify in writing, before the abortion, that the information described in
6 paragraphs I and II has been provided to her and that she has been informed of her opportunity to
7 review the information referred to in RSA 132-B:3.

8 V. Before performing the abortion procedure, the physician who is to perform the abortion or
9 the physician's agent shall obtain a copy of the executed certification required by this section.

10 132-B:3 Printed Information.

11 I. The department of health and human services shall publish and make available on the
12 department's website the following printed materials in such a way as to ensure that the information
13 is easily comprehensible:

14 (a) Geographically indexed materials designed to inform the reader of public and private
15 agencies and services available to assist a female through pregnancy, upon childbirth and while the
16 child is dependent, including adoption agencies, which shall include a comprehensive list of the
17 agencies available, a description of the services they offer, and the manner in which they may be
18 contacted, including telephone numbers. At the option of the commissioner, a 24-hour-a-day
19 telephone number may be established with the number being published in such a way as to
20 maximize public awareness of its existence which may be called to obtain a list and description of
21 agencies in the locality of the caller and the services they offer.

22 (b) Materials designed to inform the female of the probable anatomical and physiological
23 characteristics of the embryo or fetus at 2-week gestational increments from the time when a female
24 can be known to be pregnant to full term, including any relevant information on the possibility of the
25 embryo or fetus's survival and pictures or drawings representing the development of an embryo or
26 fetus at 2-week gestational increments; provided, that any such pictures or drawings must contain
27 the dimensions of the embryo or fetus and must be realistic and appropriate for the stage of
28 pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only
29 accurate scientific information about the embryo or fetus at the various gestational ages. The
30 material shall also contain objective information describing the methods of abortion procedures
31 commonly employed, the medical risks commonly associated with each procedure, the possible
32 detrimental psychological effects of abortion, and the medical risks commonly associated with
33 carrying a child to term.

34 (c) Materials designed to inform the female of the range of possibilities regarding the
35 effects and risks of a mifepristone chemical abortion or an attempt to counteract it and information
36 on and assistance with the resources that may be available.

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1 II. The materials referred to in paragraph I shall be printed in a typeface large enough to be
2 clearly legible. All pictures appearing on the website shall be a minimum of 200 x 300 pixels. All
3 letters on the website shall be a minimum of 11-point font. All information and pictures shall be
4 accessible with an industry standard browser requiring no additional plug-ins.

5 III. The materials required under this section shall be available at no cost from the
6 department of health and human services, upon request and in appropriate numbers to any person,
7 facility, or hospital.

8 2 Effective Date. This act shall take effect January 1, 2024.

**HB 562-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT requiring informed consent prior to receiving an abortion procedure.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill establishes the women's right to know act, regarding the type of informed consent required prior to receiving an abortion procedure. The Department of Health and Human Services indicates this bill would require the Department to design, produce, and make materials available on the Department website related to the listing of services and organizations that are available to assist and support a women’s pregnancy. The Department would be required to provide the materials to the public, facilities and hospitals upon request. The Commissioner of Health and Human Service may establish a 24-hour a day call line to maximize public awareness of these services, agencies and organizations.

The Department reports, according to the Guttmacher Institute, New Hampshire was estimated to have approximately 2,200 pregnancy terminations in 2017, the latest year estimates were produced. The Department does not collect pregnancy termination statistics, but based on the 2017 number, it is estimated that at least 3,000 copies of the required materials would need to be made or purchased. The Department estimates a cost of \$11,800 in FY 2024 if materials are available for purchase and or copying.

The Department estimates, if the materials described are not preprinted and available for purchase, the cost to design, produce and distribute the materials would be at minimum \$50,000. However, the Department cannot estimate how many women will be seeking abortion services and or the quantity of materials that will be requested by facilities and hospitals. As a result, the remaining cost is indeterminable.

In addition, the Department estimates that a staff member from the Division of Public Health Services would need to devote approximately 10 percent of their time to the duties required by the bill such as: writing and designing the information, purchasing any pre-made information, keeping the information on the website current, and sending out information to appropriate health care providers and members of the public. The Department indicates it does not have current staff available to perform this work and additional staff, overtime or compensatory time would be necessary. The Department assumes duties would require a position in the classification of Nurse Coordinator position (LG 23, Step 9). Ten percent of the annual cost of this position, including salary benefits and other expenses would be approximately \$10,500.

AGENCIES CONTACTED:

Department of Health and Human Services