

HB 1659-FN – AS AMENDED BY THE HOUSE

14Mar2012... 0089h

28Mar2012... 1327h

28Mar2012... 1482h

2012 SESSION

12-2014

01/09

HOUSE BILL **1659-FN**

AN ACT relative to the women's right to know act regarding abortion information.

SPONSORS: Rep. Notter, Hills 19; Rep. Bergevin, Hills 17; Rep. K. Souza, Hills 11; Rep. Peterson, Hills 19; Rep. Katsakiores, Rock 5; Rep. Cartwright, Ches 2; Rep. C. Soucy, Hills 17; Rep. DeLemus, Straf 1; Rep. Birdsell, Rock 8; Rep. L. Jones, Straf 1; Sen. White, Dist 9; Sen. Groen, Dist 6; Sen. Luther, Dist 12

COMMITTEE: Judiciary

ANALYSIS

This bill establishes the women's right to know act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the women's right to know act regarding abortion information.

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

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

CHAPTER 132-B

WOMEN'S RIGHT TO KNOW ACT

132-B:1 Title. This act shall be known as the "Women's Right to Know Act."

132-B:2 Definitions. In this chapter:

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

- (a) Save the life or preserve the health of an unborn child;
- (b) Remove a dead unborn child caused by spontaneous abortion; or
- (c) Remove an ectopic pregnancy.

II. "Facility" or "medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office,

infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

III. "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

IV. "Hospital" means a facility licensed under RSA 151.

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

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

VII. "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the woman's uterus.

VIII. "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

IX. "Unborn child" means the offspring of human beings from conception until birth.

132-B:3 Informed Consent Requirement. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

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

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

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

- (c) The probable gestational age of the unborn child at the time the abortion is to be performed;
- (d) The medical risks associated with carrying her child to term; and
- (e) Any need for anti-Rh immune globulin therapy if she is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy.

II. At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman, orally and in person, that she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled.

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

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

132-B:4 Medical Emergencies. When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an immediate abortion is necessary to avert her death or that a 24-hour delay will cause substantial and irreversible impairment of a major bodily function.

132-B:5 Civil Penalties.

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

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

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

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

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

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

132-B:6 Construction. Nothing in this chapter shall be construed as creating or recognizing a right to abortion. It is not the intention of this law to make lawful an abortion that is currently unlawful.

132-B:7 Right of Intervention. The general court, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this chapter in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this chapter is challenged.

132-B:8 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

2 Effective Date. This act shall take effect January 1, 2013.

LBAO

12-2014

Amended 03/15/12

HB 1659 FISCAL NOTE

AN ACT relative to the women's right to know act regarding abortion information.

FISCAL IMPACT:

The Department of Health and Human Services, Judicial Branch, Judicial Council, New Hampshire Association of Counties, and the Departments of Justice, and Corrections state this bill, as amended by the House (Amendment #2012-0089h), will increase state and county expenditures by interminable amounts in FY 2013 and in each year thereafter. There will be no fiscal impact on state, county, or local revenue, or local expenditures.

METHODOLOGY:

The Department of Health and Human Services states this bill requires the Department to publish printed informational materials and produce an informational streaming video in English, Spanish, and other appropriate languages. The materials would be updated annually and available at no cost, and would include the complete and comprehensive information on abortion and the alternatives to abortion as specified in the bill including the checklist certification form used by the physician or qualified person to confirm the information has been provided to the woman. In addition, the Department must maintain a secure Internet website to provide the information and a toll free 24 hour-a-day telephone number to provide information on local agencies and services available. The Department states it will prescribe and receive the required reporting forms completed by physicians, pathologists, and the hospitals or licensed facilities in which an abortion occurs and prepare the annual statistical report to the general court. The Department assumes, in order for the program to start on January 1, 2013, a full-time Program Planner III and a part-time Executive Secretary would need to start in July 2012 gathering the information, designing the printed materials and web page, establishing the 24/7 information line and creating an Access database. The Department estimates the personnel and associated costs as follows:

	FY 2013	FY 2014	FY 2015	FY 2016
Salaries - Full-time Program Planner III and Part-time Executive Secretary	\$57,567	\$59,514	\$62,039	\$64,672
Benefits	\$24,002	\$26,551	\$28,669	\$31,045
Current Expense - Postage, telephone and office supplies	\$3,000	\$3,000	\$3,000	\$3,000
Rent	\$10,763	\$11,790	\$12,026	\$12,266
In-State Travel	\$1,500	\$1,500	\$1,500	\$1,500
Equipment - Computer and office furniture	\$7,000	\$0	\$0	\$0
24 hour information line	<u>\$3,528</u>	<u>\$3,528</u>	<u>\$3,528</u>	<u>\$3,528</u>
Total	\$107,360	\$105,883	\$110,762	\$116,011

The Department is not able to accurately determine the costs for the printed materials, the streaming video, or the annual report since the volume of information and size of the publications is not known at this time.

The Judicial Branch states several sections of this bill could result in a fiscal impact the Branch:

- The Branch has no information on which to estimate how many felonies would be prosecuted against individuals who intentionally, knowingly or recklessly violate the provisions of this proposed law, but the Branch indicates the estimated cost of an average routine criminal case in the superior court will be \$389.84 in FY 2013 and \$401.48 in FY 2014. These amounts do not include the cost of appeals which may be taken following trial.
- A civil malpractice action brought against a person for failure to comply with the requirements of this bill law would be classified as a complex civil case in the superior court. The Branch has no information on which to estimate how many new complex civil cases will be brought, but estimates the cost of an average complex civil case in the superior court will be \$633.81 in FY 2013 and \$651.29 in FY 2014. These amounts do not include the cost of appeals which may be taken following trial.
- Professional disciplinary actions against physicians pursuant to proposed RSA 132-B:8 or 132-B:9, X(a) may be appealed to the Supreme Court. The Branch has no information on how many appeals may arise from the proposed bill or on whether the appeals would be

declined, accepted for full appellate review, or accepted for a more limited review.

- Actions to disclose to law enforcement officials confidential reports filed pursuant to proposed RSA 132-B:9 would be considered complex equity cases in the superior court. The Branch has no information on how many such cases may arise, but estimates the cost of an average complex equity case in superior court will be \$576.05 in FY 2013 and \$602.60 in FY 2014. These amounts do not consider the cost of any appeals that may be taken following trial.
- The Branch has no information on how many class B misdemeanor cases would be brought pursuant to the proposed RSA 132-B:9, X (b) and (c). The Branch estimates the cost to process an average class B misdemeanor case in the district division of the circuit court will be \$43.19 in FY 2013 and \$44.54 in FY 2014. These amounts do not consider the cost of any appeals of a class B misdemeanor that may be taken to the Supreme Court following trial in the district division of the circuit court.
- The Branch has no information on how many class A misdemeanors would be prosecuted pursuant to 132-B:9 X(d), but does have information on the average cost of processing these cases in the trial court. The cost to the Judicial Branch of processing an average class A misdemeanor in the district division of the circuit court is estimated to be \$59.11 in FY 2013 and \$61.31 in FY 2014. These amounts do not consider the cost of any appeals that may be taken following trial.

In summary, the Judicial Branch is able to identify areas of fiscal impact in this bill, but is not able provide an accurate estimate of the fiscal impact.

The Judicial Council states this bill may result in little or no fiscal impact to the Judicial Council. The Council assumes physicians may be less likely than average citizens to be eligible for indigent defense representation, but states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor and \$756.24 per felony is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge and \$4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel

are requested and approved by the court during the defense of a case or during an appeal.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Justice states the criminal offense created by this bill would typically be prosecuted by a county attorney's office. The Department states there would be a fiscal impact in cases when an appeal is taken to the NH Supreme Court, but is not able to predict how many cases may be appealed. In addition, violations could trigger a complaint to a medical licensing board which would impact the Civil Bureau which serves as legal counsel to the boards. The Administrative Prosecutions Unit may need to investigate and prosecute complaints filed with a licensing board for violations under this law. Finally, additional resources may be needed within the Civil Bureau to provide legal counsel to the Department of Health and Human Services to assist it in meeting its obligations described in the bill. The Department is not able to determine the fiscal impact of these potential requirements.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2010 was \$32,492. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2010 was \$659.