

SB 319-FN – VERSION ADOPTED BY BOTH BODIES

15May2014... 1720h

2014 SESSION

14-2812  
01/10

SENATE BILL        ***319-FN***

AN ACT                relative to access to reproductive health care facilities.

SPONSORS:        Sen. Soucy, Dist 18; Sen. D'Allesandro, Dist 20; Sen. Odell, Dist 8; Sen. Stiles, Dist 24; Sen. Bradley, Dist 3; Rep. Long, Hills 42; Rep. Heath, Hills 14; Rep. Bouchard, Merr 18

COMMITTEE:        Judiciary

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ANALYSIS

This bill provides certain parameters for access to reproductive health care facilities. The bill establishes a civil fine and authorizes the attorney general or county attorney to seek injunctive relief in certain circumstances.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT                    relative to access to reproductive health care facilities.

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

1            1 Statement of Findings and Purposes.

2            I. The New Hampshire general court hereby finds as follows:

3                    (a) Access to reproductive health care facilities is important for residents and visitors to  
4 the state of New Hampshire and is a right that must be protected.

5                    (b) The exercise of a person's right to protest or counsel against certain medical  
6 procedures is a First Amendment activity that must be protected.

7                    (c) Public sidewalks adjacent to reproductive health care facilities in New Hampshire  
8 communities are often narrow, measuring between 6 and 8 feet wide. These sidewalks abut city streets.

9                    (d) Under federal law 18 U.S.C. section 248 (2010) it is unlawful for any person to  
10 obstruct or interfere with another person's access to reproductive health care services.

11                    (e) Recent demonstrations outside of reproductive health care facilities have resulted in  
12 the fear and intimidation of patients and employees of these facilities.

13                    (f) Recent demonstrations outside of reproductive health care facilities have caused patients  
14 and employees of these facilities to believe that their safety and right to privacy are threatened.

15                    (g) Recent demonstrations outside of reproductive health care facilities have resulted in  
16 the fear and intimidation of residents and patrons seeking to enter or leave their homes or other  
17 private businesses adjacent to the reproductive health care facilities.

18            II. The general court further finds that it is in the interest of public health, safety and  
19 welfare to regulate the use of public sidewalks and streets adjacent to reproductive health care  
20 facilities to promote the free flow of traffic on streets and sidewalks, reduce disputes and potentially  
21 violent confrontations requiring significant law enforcement services, protect property rights, protect  
22 First Amendment freedoms of speech and expression and secure a citizen's right to seek reproductive  
23 health care services.

24            III. The general court finds that establishing a limited buffer zone outside of some  
25 reproductive health care facilities located in the state of New Hampshire is necessary to ensure that  
26 patients and employees of reproductive health care facilities have unimpeded access to reproductive  
27 health care services while accommodating the First Amendment rights of people to communicate  
28 their message to their intended audience without undue burdens or restrictions.

29            IV. The general court hereby seeks to provide unobstructed access to reproductive health  
30 care facilities by setting clear guidelines for activity in the immediate vicinity of the reproductive

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health care facilities.

V. Therefore the general court hereby establishes the access to reproductive health care facilities law to recognize and seek to balance both the fundamental right to assemble peacefully and to demonstrate on matters of public concern, with the right to seek and obtain reproductive health care services in a safe and private manner. This law is intended to promote the full exercise of these rights and to strike an appropriate accommodation between them.

2 New Subdivision; Access to Reproductive Health Care Facilities. Amend RSA 132 by inserting after section 36 the following new subdivision:

Access to Reproductive Health Care Facilities

132:37 Definitions. In this subdivision:

I. “Reproductive health care facility” means a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.

II. “Patient escort services” means the act of physically escorting patients through the buffer zone to the reproductive health care facility and does not include counseling or protesting of any sort during such escort service.

132:38 Prohibited Acts.

I. No person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius up to 25 feet of any portion of an entrance, exit, or driveway of a reproductive health care facility. This section shall not apply to the following:

(a) Persons entering or leaving such facility.

(b) Employees or agents of such facility acting within the scope of their employment for the purpose of providing patient escort services only.

(c) Law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment.

(d) Persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility.

II. Reproductive health care facilities shall clearly demarcate the zone authorized in paragraph I and post such zone with signage containing the following language:

*Reproductive Health Center*

*Patient Safety Zone*

*No Congregating, Patrolling, Picketing, or Demonstrating Between Signs*

*Pursuant to RSA 132:38*

III. Prior to posting the signage authorized under paragraph II, a reproductive health care facility shall consult with local law enforcement and those local authorities with responsibilities specific to the approval of locations and size of the signs to ensure compliance with local ordinances.

IV. The provisions of this section shall only be effective during the facility’s business hours.  
132:39 Enforcement; Civil Fine.

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1           I. Prior to issuing a citation for a violation of this section, a police officer or any law  
2 enforcement officer shall issue one written warning to an individual. If the individual fails to comply  
3 after one warning, such individual shall be given a citation. Failure to comply after one warning  
4 shall be cause for citation whether or not the failure or subsequent failures are contemporaneous in  
5 time with the initial warning.

6           II. Any person who violates this subdivision shall be guilty of a violation and shall be  
7 charged a minimum fine of \$100. In addition, the attorney general or the appropriate county  
8 attorney may bring an action for injunctive relief to prevent further violations of this subdivision.

9           III. This section shall not apply unless the signage authorized in RSA 132:38, II was in place  
10 at the time of the alleged violation.

11       132:40 Severability. If any provision of this subdivision or the application thereof to any person  
12 or circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
13 the subdivision which can be given effect without the invalid provision or application, and to this end  
14 the provisions of this subdivision are declared to be severable.

15       3 Effective Date. This act shall take effect 30 days after its passage.

**SB 319-FN FISCAL NOTE**

AN ACT                      relative to access to reproductive health care facilities.

**FISCAL IMPACT:**

The Judicial Branch, the Department of Justice, and the New Hampshire Association of Counties state this bill, as amended by the House (Amendment #2014-1720h), may increase state and county expenditures, and state revenue by indeterminable amounts in FY 2015 and in each year thereafter. There will be no fiscal impact on county or local revenue or local expenditures.

**METHODOLOGY:**

The Judicial Branch states this bill would add RSA 132:37 through 40 regarding access to reproductive healthcare facilities. The Branch indicates the potential fiscal impact is in the enforcement section, proposed RSA 132:39, which makes violations of the bill a violation level offense. In addition, it authorizes the attorney general or county attorney to bring an action for injunctive relief to prevent further violations. The Branch has no information on which to estimate how many additional violation level offenses will result from the proposed bill, but does have information the average cost of processing such cases in the trial court. The estimated cost to the Judicial Branch of an average violation level offense in the district division of the circuit court will be \$45.46 in FY 2015, and \$46.45 in FY 2016. These amounts do not consider the cost of any appeals that may be taken following trial. Regarding injunction actions, the Branch has no information on how many such actions would be filed in the superior court. The New Hampshire Judicial Needs Assessment done by the National Center for State Courts in 2005 classifies injunction actions as complex equity cases. The estimated cost to the Judicial Branch of a complex equity case in the superior court will be \$668.25 in FY 2015, and \$683.30 in FY 2016. These amounts do not consider the cost of potential appeals that may be taken following trial. The Branch indicates the cost estimates are based on studies of judicial and clerical weighted caseload times for processing average cases. These studies are more than eight years old for judicial time and clerical time in the district court and over six year old for clerical time in the superior court and, due to various changes since then, may not have current validity.

The Department of Justice states this bill would establish certain parameters for access to reproductive health care facilities by creating a buffer zone around reproductive health care facilities. The violation level offense created by the bill would typically be prosecuted by a

county attorney's office; however there would be some impact to the Department of Justice in instances when an appeal is taken to the New Hampshire Supreme Court. The Department is not able to estimate how many, if any, of the cases would be appealed to the Supreme Court. In addition, the Department states the bill would authorize the attorney general or a county attorney to bring action for injunctive relief to prevent further violations. The Department cannot determine how many, if any, actions for injunction would be filed by the Department of Justice.

The Association of Counties states this bill provides for certain access to reproductive health care facilities and authorizes the county attorney to bring action for injunctive relief. The Association states the law is enabling only and if exercised may increase county expenditures.