

1 H.310

2 Introduced by Representatives Burditt of West Rutland, Strong of Albany,
3 Batchelor of Derby, Kitzmiller of Montpelier, Lefebvre of
4 Newark, Masland of Thetford, Mrowicki of Putney, and
5 Troiano of Stannard

6 Referred to Committee on

7 Date:

8 Subject: Health; immunizations; informed consent; medical malpractice

9 Statement of purpose of bill as introduced: This bill proposes to establish a
10 definition for “lack of informed consent” as applies to the administration of
11 immunizations for the purpose of medical malpractice actions.

12 An act relating to informed consent for the administration of immunizations

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 12 V.S.A. § 1909 is amended to read:

15 § 1909. LIMITATION OF MEDICAL MALPRACTICE ACTION BASED
16 ON LACK OF INFORMED CONSENT

17 (a) For the purpose of this section, “lack of informed consent” means:

18 (1) the failure of the person providing the professional treatment or
19 diagnosis to disclose to the patient such alternatives thereto and the reasonably
20 foreseeable risks and benefits involved as a reasonable medical practitioner

1 under similar circumstances would have disclosed, in a manner permitting the
2 patient to make a knowledgeable evaluation; or

3 (2) the failure to disclose the information required by subsection (d) of
4 this section.

5 (b) The right of action to recover for medical malpractice based on a lack
6 of informed consent shall not apply in the case of an emergency.

7 (c) It shall be a defense to any action for medical malpractice based upon
8 an alleged failure to obtain such an informed consent that:

9 (1) the risk not disclosed is too commonly known to require disclosure
10 and that the risk is not substantial;

11 (2) the patient assured the medical practitioner he or she would undergo
12 the treatment, procedure, or diagnosis regardless of the risk involved, or the
13 patient indicated to the medical practitioner that he or she did not want to be
14 informed of the matters to which he or she would be entitled to be informed;

15 (3) consent by or on behalf of the patient was not reasonably possible; or

16 (4) a reasonably prudent person in the patient's position would have
17 undergone the treatment or diagnosis if he or she had been fully informed.

18 (d) A patient shall be entitled to a reasonable answer to any specific
19 question about foreseeable risks and benefits, and a medical practitioner shall
20 not withhold any requested information.

1 (e) A motion for judgment for the defendant at the end of plaintiff's case
2 must be granted as to any cause of action for medical malpractice based solely
3 on lack of informed consent if the plaintiff has failed to adduce expert medical
4 testimony in support of the allegation that he or she was not provided sufficient
5 information as required by subdivision (a)(1) of this section.

6 (f) With regard to the administration of immunizations, "lack of informed
7 consent" means:

8 (1) failure to provide a person, or in the case of a minor, the person's
9 parent or guardian with a copy of the relevant immunization's package insert at
10 least 24 hours prior to administering the immunization;

11 (2) failure to inform a person, or in the case of a minor, the person's
12 parent or guardian that the person may consent or refuse an immunization
13 without threat, coercion, or punitive measures resulting; and

14 (3) failure to obtain prior written consent from a person, or in the case of
15 a minor, the person's parent or guardian prior to administration of an
16 immunization.

17 Sec. 2. 18 V.S.A. § 1133 is added to read:

18 § 1133. INFORMED CONSENT FOR THE ADMINISTRATION OF

19 IMMUNIZATIONS

20 The administration of any immunization shall require obtaining informed
21 consent in accordance with 12 V.S.A. § 1909(f).

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2019.