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H.188

Introduced by Representatives Higley of Lowell, Peterson of Clarendon,  
Williams of Granby, and Wilson of Lyndon

Referred to Committee on

Date:

Subject: Health; immunizations; informed consent; medical malpractice

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

An act relating to informed consent for the administration of immunizations

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

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

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

(a) ~~For the purpose of~~ As used in this section, “lack of informed consent”  
means:

(1) the failure of the person providing the professional treatment or  
diagnosis to disclose to the patient such alternatives thereto and the reasonably  
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~~ that the patient  
12 would undergo the treatment, procedure, or diagnosis regardless of the risk  
13 involved, or the patient indicated to the medical practitioner that ~~he or she~~ the  
14 patient did not want to be informed of the matters to which ~~he or she~~ the  
15 patient would be entitled to be informed;

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

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

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

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

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

12 (1) failure to provide an individual or, in the case of a minor, the  
13 individual's parent or guardian with a copy of the relevant immunization's  
14 package insert at least 24 hours prior to administering the immunization;

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

18 (3) failure to obtain prior written consent from an individual or, in the  
19 case of a minor, the individual's parent or guardian prior to the administration  
20 of an immunization.

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

2       § 1133. INFORMED CONSENT FOR THE ADMINISTRATION OF

3                 IMMUNIZATIONS

4                 The administration of any immunization shall require obtaining informed

5       consent in accordance with 12 V.S.A. § 1909(f).

6       Sec. 3. EFFECTIVE DATE

7                 This act shall take effect on July 1, 2023.