

HB 596-FN - AS INTRODUCED

2021 SESSION

21-0146

06/05

HOUSE BILL ***596-FN***

AN ACT prohibiting public funding of abortions and establishing the New Hampshire foster care and adoption initiative fund.

SPONSORS: Rep. Plett, Hills. 6

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits the state from funding certain abortions. This bill also establishes the New Hampshire foster care and adoption initiative fund.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT prohibiting public funding of abortions and establishing the New Hampshire foster care and adoption initiative fund.

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

1 1 New Chapter; Abortion, Adoption, And Foster Care Funding. Amend RSA by inserting after
2 chapter 132-A the following new chapter:

3 CHAPTER 132-B

4 ABORTION, ADOPTION, AND FOSTER CARE FUNDING

5 132-B:1 Short Title. This chapter shall be known and cited as the "Life Appropriation Act."

6 132-B:2 Definitions. In this chapter:

7 I. "Abortion referral" means the act of recommending a pregnant woman to a doctor, clinic,
8 or other person or entity for the purpose of obtaining or learning about obtaining a convenience
9 abortion.

10 II. "Affiliate" means an individual or entity that, directly or indirectly, owns, controls, is
11 controlled by, or is under the common control of another person or entity, in whole or in part, or a
12 subsidiary, parent, or sibling.

13 III. "Breast and Cervical Cancer Mortality Prevention Act" means the "Breast and Cervical
14 Cancer Mortality Prevention Act of 1990" 104 Stat. 409 (1990) 42 U.S.C. 300k, as amended.

15 IV. "Conception" means fertilization.

16 V. "Convenience Abortion" means an elective or non-therapeutic abortion that uses an
17 instrument, medicine, drug, device, or another substance or means with the intent to terminate the
18 clinically diagnosable pregnancy of a woman with knowledge that the termination by those means
19 will with reasonable likelihood cause the death of the unborn child. An act is not a convenience
20 abortion if the act is performed with the intent to:

21 (a) Save the life of the mother or resolve a medical emergency.

22 (b) Save the life or preserve the health of the unborn child.

23 (c) Remove a dead unborn child caused by spontaneous abortion.

24 (d) Remove an ectopic pregnancy.

25 (e) Abort and remove an unborn child that is the result of rape or incest reported to a
26 law enforcement agency.

27 (f) Abort and remove an unborn child because of a fetal malformation that is
28 incompatible with the baby being born alive.

29 VI. "Emotional appeal" is a method of persuasion through sentiment, not logic, that is
30 designed to create an emotional response.

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1 VII. "Facility" means any public or private hospital, clinic, center, medical school, medical
2 training institution, health care facility, physician's office, infirmary, dispensary, ambulatory
3 surgical treatment center or other institution or location where medical care is provided to any
4 person.

5 VIII. "Fund" means the New Hampshire foster care and adoption initiative fund.

6 IX. "Infertility prevention project" means the infertility prevention project operated by the
7 United States Centers for Disease Control and Prevention.

8 X. "Lemon test" means:

9 (a) A three-prong test that was originally created by the United States Supreme Court
10 and now adopted by this state to determine if government action is unconstitutional under the
11 Establishment Clause. The test requires that state action or government policy:

12 (1) Have a valid secular purpose.

13 (2) Not have the effect of advancing, endorsing, or inhibiting religion.

14 (3) Not foster excessive entanglement with religion.

15 (b) Government action violates the Establishment Clause if it fails to satisfy any of the
16 prongs.

17 XI. "Logical nexus" means some relevant connection.

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

22 XIII. "Minority HIV/AIDS initiative" means the minority HIV/AIDS initiative operated by
23 the Office of Minority Health in the United States Department of Health and Human Services.

24 XIV. "Non-government group" means a nonprofit organization exempt from federal income
25 taxation under section 501(c)(3) of the Internal Revenue Code or any other individual or group that
26 is working to:

27 (a) Advance:

28 (1) Birth.

29 (2) The interests, knowledge, safety, health, and welfare of expectant mothers.

30 (3) The facilitation of quality, safe, and healthy adoption and the cultivation of
31 strong nurturing families.

32 (4) The quality, strength, safeness, and effectiveness of the foster care system.

33 (b) Provide:

34 (1) Ultrasound testing.

35 (2) The employment opportunities of single mothers who are expecting.

36 (3) Counseling and therapy for expectant or new mothers.

37 (4) Community for expectant or new mothers.

1 XV. "Non-secular sham" means a policy, a course, or principle of action adopted or proposed
2 by a state actor which endorses, respects, or favors the beliefs of a particular religion where the pre-
3 eminent and primary force driving the state's action is not genuine, but is a sham that ultimately
4 has a primary religious objective. The term refers to a type of policy that is predicated on a series of
5 unproven faith-based assumptions and naked assertions that are implicitly religious.

6 XVI. "Personal responsibility education program" means the program administered by the
7 administration for children and families in the United States Department of Health and Human
8 Services to educate adolescents on abstinence and contraception for the prevention of pregnancy and
9 sexually transmitted infections.

10 XVII. "Physician" means a person licensed to practice medicine and surgery in this state.

11 XVIII. "Pregnancy" means the female reproductive condition of having an unborn child in
12 the woman's uterus.

13 XIX. "Promote" means to advocate for, assist with, encourage, or popularize through
14 advertising or publicity.

15 XX. "Public funds" means any funds received or controlled by this state or any agency or
16 political subdivision thereof, including, but not limited to, funds derived from federal, state or local
17 taxes, gifts or grants from any source, public or private, federal grants or payments, or
18 intergovernmental transfers.

19 XXI. "Reasonable observer" means a person of ordinary prudence who views a policy from an
20 objective standpoint in the context of the state's longstanding practice through the lens of self-
21 evident neutral, natural, and non-controversial transcultural morality and who has not been
22 desensitized by so-called evolving standards of decency that are predicated on a current cultural
23 mindset that seeks to normalize practices that were otherwise considered to be self-evidently
24 immoral, obscene, injurious, unnatural, or subversive to human flourishing.

25 XXII. "Religion" means a set of unproven answers to the greater questions that are
26 predicated on an institutionalized or non-institutionalized faith-based world view flowing out of a
27 community that is organized, full, and has a code by which members may guide their daily lives.

28 XXIII. "Secular humanism" means a faith-based world view that is also referred to as
29 postmodern western individualistic moral relativism, expressive individualism, or leftism. A belief
30 system that is protected by the Free Exercise Clause of the First Amendment of the United States
31 Constitution and article 6 of the New Hampshire constitution and centered on the unproven
32 assumption that there are no moral absolutes and that one moral doctrine should be used as the
33 superior basis for law and policy. The term includes a series of unproven faith-based assumptions
34 and naked assertions that suggest that morality and truth are man-made conventions and that at
35 the heart of liberty is man's ability to define his own meaning of the universe. The term refers to a
36 religion that does not fulfill any compelling state interest but instead tends to erode community
37 standards of decency and promote licentiousness. The term refers to the unproven belief that

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1 convenience abortions are moral or plausible. The term includes sexual orientation orthodoxy and
2 non-secular self-asserted sex-based identity narratives. The term refers to the belief that man is
3 merely a bundle of chemicals, animated pieces of meat, or accidental particles and that nature is all
4 there is. The term refers to the unproven faith-based assumption or Nietzschean theory that man
5 evolved from monkeys and should, therefore, love one another just because.

6 XXIV. "Secular policy" means a course or principle of action adopted or proposed by a state
7 actor that is natural, neutral, and non-controversial that is based on self-evident morality and
8 objective truth from the reasonable observer perspective. The term includes government procedure
9 or state action that generally accomplishes its goals and does not tend to put religion over non-
10 religion or one religion over another or does not convey to a reasonable observer that the state favors
11 one religion. The term includes a course of government action where the pre-eminent and primary
12 force driving the policy is genuine, not a sham, and not merely secondary to a religious objective.

13 XXV. "Secular abortion" means the act of using or prescribing an instrument, medicine,
14 drug, device, or another substance or means with the intent to terminate the clinically diagnosable
15 pregnancy of a woman with knowledge that the termination by those means will with reasonable
16 likelihood cause the death of the unborn child, when carried out to:

- 17 (a) Save the life of the mother or resolve a medical emergency.
18 (b) Save the life or preserve the health of the unborn child.
19 (c) Remove a dead unborn child caused by spontaneous abortion.
20 (d) Remove an ectopic pregnancy.
21 (e) Abort and remove an unborn child that is the result of rape or incest reported to a
22 law enforcement agency.
23 (f) Abort and remove an unborn child because of a fetal malformation that is
24 incompatible with the baby being born alive.

25 XXVI. "Taxpayer standing" means standing of a taxpayer to file a lawsuit against the
26 government actor that is directly or symbolically engaging in practices that violate the
27 Establishment Clause of the First Amendment after it actually or prospectively engaged in action
28 that potentially failed at least one prong of the Lemon test or coercion test. The term includes a test
29 that requires a minimal logical nexus in order to be invoked by a taxpayer when the government is
30 directly or symbolically endorsing a religion in a coercive manner in violation of the Lemon test.

31 XXVII. "Unborn child" means the offspring of human beings from fertilization until birth.

32 XXVIII. "Violence Against Women Act" means sections of the Violent Crime Control and
33 Law Enforcement Act of 1994, Pub. L. 103-322.

34 132-B:3 Prohibition of Appropriations of Public Funds to Convenience Abortion Providers.

35 I. No agency or instrumentality of the state may appropriate or award a grant of public
36 funds to pay the direct or indirect costs of performing, inducing, referring, or counseling in favor of
37 convenience abortions, because such state action fails the Lemon test and violates the First

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1 Amendment Establishment Clause of the United States Constitution and article 6 of the New
2 Hampshire constitution for:

3 (a) Constituting a non-secular sham.

4 (b) Cultivating indefensible legal weapons against non-observers of the religion of
5 Secular Humanism.

6 (c) Having the effect of excessively entangling the government with the religion of
7 Secular Humanism.

8 II. Pursuant to the First Amendment Establishment Clause of the United States
9 Constitution, article 6 of the New Hampshire constitution and the state's compelling interest to
10 discourage licentiousness, no agency or instrumentality of the state shall grant, appropriate, or
11 distribute a grant of public funds to an individual or entity that:

12 (a) Performs convenience abortions, induces convenience abortions, provides convenience
13 abortion referrals, or counsels in favor of convenience abortions; and

14 (b) Is an affiliate of a person or entity that performs abortions, induces abortions,
15 provides abortion referrals, or counsels in favor of convenience abortions because such
16 appropriations have the effect of endorsing non-secular practices that excessively entangles the
17 government with the religion of Secular Humanism.

18 III. Pursuant to the First Amendment Establishment Clause of the United States
19 Constitution, article 6 of the New Hampshire constitution, and the state's compelling interest to
20 uphold community standards of decency, no agency or instrumentality of the state shall appropriate
21 or award a grant of public funds to pay the direct or indirect costs of performing, inducing, referring,
22 or counseling in favor of convenience abortions including, without limitation:

23 (a) Administrative costs and expenses.

24 (b) Overhead costs.

25 (c) Employee salaries.

26 (d) Rent and mortgage payments.

27 (e) Telephone and other utility payments.

28 IV. Pursuant to the First Amendment Establishment Clause of the United States
29 Constitution, article 6 of the New Hampshire constitution, and the state's compelling interest to
30 discourage licentiousness, the department of health and human services and all other state agencies
31 shall ensure that no public funds received through the Violence Against Women Act, the Breast and
32 Cervical Cancer Mortality Prevention Act, the infertility prevention project, the HIV/AIDS initiative,
33 the Infant Mortality Reduction Initiative, or any other similar federal program shall be used to:

34 (a) Perform convenience abortions.

35 (b) Promote convenience abortions.

36 (c) Contract with any entity that performs or promotes convenience abortions.

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1 (d) Become or continue to be an affiliate of any entity that performs or promotes
2 convenience abortions because such an appropriation endorses non-secular practices and has the
3 effect of excessively entangling the government with the religion of Secular Humanism.

4 V. Any taxpayer of this state or its political subdivisions shall have taxpayer standing to
5 bring suit in a court of competent jurisdiction to enforce the provisions of this section. The
6 prevailing party may seek attorney fees, costs, and other forms of equitable relief.

7 VI. Any officer or employee of the state who knowingly authorizes the use of public funds
8 prohibited by this section may be dismissed from that person's office or position and the person's
9 employment may be immediately terminated.

10 132-B:4 New Hampshire Foster Care And Adoption Initiative Fund.

11 I. There is established the New Hampshire foster care and adoption initiatives fund. The
12 fund shall be in the custody of the treasurer of state, but shall not be part of the state treasury.

13 II. The fund shall consist of:

14 (a) Moneys collected from any fees imposed on convenience abortion providers for
15 cultivating secondary harmful effects or eroding community standards of decency.

16 (b) Any fines or monetary penalties awarded to the state against convenience abortion
17 providers, physicians, or facilities for violating state law.

18 (c) Any other appropriations, gifts, grants, donations, and bequests.

19 III. Public funds that would have otherwise been appropriated in the past to facilities
20 providing convenience abortions may be appropriated to the fund.

21 IV. All interest earned on the fund shall be credited to the fund.

22 V. The purpose of the fund is to provide grant funding for foster care and adoption services
23 and initiatives for both government and non-government groups and individuals.

24 VI. The department of health and human services shall administer the fund and adopt rules
25 pertaining to the fund. The department of health and human services shall allocate moneys from
26 the fund according to the following distribution:

27 (a) Fifty percent of the moneys in the fund shall be used for foster care services and
28 initiatives.

29 (b) Fifty percent of the moneys in the fund shall be used for adoption services and
30 initiatives or to care for unborn children and their mothers.

31 VII. The department of health and human services shall evaluate activities conducted under
32 this section each year and, on or before February 15, submit an annual report containing the
33 evaluation to the senate clerk and the clerk of the house of representatives and notify the legislature
34 that the report is available. The report shall include the manner in which the funds in the account
35 were maintained and distributed.

36 132-B:5 Prohibition of Discrimination Based upon Moral Beliefs.

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1 I. Pursuant to the Free Exercise Clause of the First Amendment of the United States
2 Constitution and article 5 of the New Hampshire constitution:

3 (a) No hospital or any other state actor shall discriminate against or discipline a person
4 because of the person's moral religious beliefs in favor or against convenience abortion or secular
5 abortion ideology and practices.

6 (b) No private or denominational hospital shall be required to permit its facilities to be
7 utilized for the performance of convenience abortions.

8 (c) No person shall be required, as a condition of training, employment, pay, promotion,
9 or privileges, to agree to perform or participate in the performance of convenience abortions.

10 II. A civil action for damages or reinstatement of employment, or both, may be brought for
11 any violation of this subsection. The prevailing party may seek attorney fees, costs, and other forms
12 of equitable relief.

13 132-B:6 Hospitals and Medicaid Funding. The restrictions under RSA 132-B:3 do not apply to
14 funding available through the state's plan for medical assistance as required by title XIX of the
15 federal Social Security Act.

16 2 New Subparagraph; Application of Receipts. Amend RSA 6:12, I(b) by inserting after
17 subparagraph (364) the following new subparagraph:

18 (365) Moneys deposited in the New Hampshire foster care and adoption initiative
19 fund established in RSA 132-B:4.

20 3 Effective Date. This act shall take effect 60 days after its passage.

HB 596-FN- FISCAL NOTE
AS INTRODUCED

AN ACT prohibiting public funding of abortions and establishing the New Hampshire foster care and adoption initiative fund.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Federal funds; newly-established NH foster care and adoption initiative fund.			

METHODOLOGY:

This bill prohibits any public funds from paying for an abortion not necessary to save the woman's life. In addition, the bill establishes a New Hampshire foster care and adoption initiative fund, to be funded by fees, fines, and other monetary penalties collected from abortion providers for violations of the newly created chapter. The fund would also be authorized to accept gifts, grants, donations, and bequests.

The Department of Health and Human Services states that currently, federal and state general funds are used to fund family planning centers in New Hampshire, although they are not used for terminations of pregnancy. With respect to services for termination of pregnancy, each entity supported under the NH family planning program must not provide an actual abortion as a method of family planning. The Department further notes that the State does not employ any physicians or other health care practitioners who perform termination of pregnancy services. The program does pay a percentage of medical provider's salaries who may provide other services outside the purview of the NH Family Planning program.

Given the above limitations on the use of state and federal family planning funds, the bill's fiscal impact is unclear.

The Judicial Branch states that the bill creates a civil cause of action. While it is likely this would result in additional civil actions filed in superior court, it is not possible to calculate how

many new cases would be filed under the new provision or the impact on the Judicial Branch's resources.

AGENCIES CONTACTED:

Department of Health and Human Services and Judicial Branch