

Sen. Whitley, Dist 15  
Sen. Cavanaugh, Dist 16  
Sen. D'Allesandro, Dist 20  
Sen. Kahn, Dist 10  
Sen. Perkins Kwoka, Dist 21  
Sen. Prentiss, Dist 5  
Sen. Rosenwald, Dist 13  
Sen. Sherman, Dist 24  
Sen. Soucy, Dist 18  
Sen. Watters, Dist 4  
June 3, 2021  
2021-1883s  
06/10

Floor Amendment to HB 2-FN-A-LOCAL

1 Amend the bill by replacing section 39 with the following:

2  
3 39 New Subdivision; Fetal Life Protection Act. Amend RSA 329 by inserting after section 42 the  
4 following new subdivision:

5 Fetal Life Protection Act

6 329:43 Definitions. In this subdivision:

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

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

15 II. "Attempt to perform" means an act or omission of a statutorily required act that, under  
16 the circumstances as the actor believes them to be, constitutes a substantial step in a course of  
17 conduct planned to culminate in the performance or inducement of an abortion.

18 III. "Conception" means the fusion of a human spermatozoon with a human ovum.

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

21 V. "Medical facility" means any public or private hospital, clinic, center, medical school,  
22 medical training institution, health care facility, physician's office, infirmary, dispensary,  
23 ambulatory surgical treatment center, or other institution or location wherein medical care is  
24 provided to any person.

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1 VI. "Health care provider" means any person who provides health care services. The term  
2 includes but is not limited to medical doctors, doctors of osteopathy, nurses, or any employee of a  
3 medical facility.

4 VII. "Pregnant" or "pregnancy" means the female reproductive condition of having one or  
5 more developing embryos or fetuses implanted in the uterus or elsewhere in the female body.

6 VIII. "Probable gestational age" means what, in reasonable medical judgment, will with  
7 reasonable probability be the gestational age of the fetus at the time the abortion is considered,  
8 performed, or attempted.

9 IX. "Reasonable medical judgment" means that medical judgment that would be made by a  
10 reasonably prudent physician in the community, knowledgeable about the case and the treatment  
11 possibilities with respect to the medical conditions involved.

12 X. "Fetus" means an unborn offspring, from the embryo stage which is the end of the  
13 twentieth week after conception or, in the case of in vitro fertilization, the end of the twentieth week  
14 after implantation, until birth.

15 329:44 Prohibition.

16 I. Except in cases of rape, in cases of incest, or to preserve the life or health of the pregnant  
17 woman, no abortion shall be performed, induced, or attempted by any health care provider unless a  
18 health care provider has first made a determination of the probable gestational age of the fetus.

19 II. Except in cases of rape, in cases of incest, or to preserve the life or health of the pregnant  
20 woman, no health care provider shall knowingly perform, induce, or attempt to perform an abortion  
21 upon a pregnant woman when the probable gestational age of her fetus has been determined to be at  
22 least 24 weeks or in the absence of a determination by a health care provider pursuant to paragraph  
23 I as to the fetus' probable gestational age.

24 329:45 Reporting.

25 I. Any health care provider who performs an abortion under this subdivision shall report, in  
26 writing, to the medical facility in which the abortion is performed the reason for the determination  
27 that a medical emergency existed. The health care provider's written report shall be included in a  
28 written report from the medical facility to the department of health and human services. If the  
29 abortion is not performed in a medical facility, the health care provider shall report, in writing, the  
30 reason for the determination that a medical emergency existed to the department of health and  
31 human services as part of the written report made by the health care provider to the department.  
32 The health care provider and the medical facility shall retain a copy of the written reports required  
33 under this section for not less than 5 years.

34 329:46 Criminal Penalties. Any health care provider who knowingly performs or induces an  
35 abortion in violation of RSA 329:44, II may be guilty of a misdemeanor.

36 329:47 Review by New Hampshire Board of Medicine.

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1           I. A defendant health care provider accused of violating this subdivision may seek a hearing  
2 before the board of medicine as to whether the health care provider's conduct was necessary to  
3 preserve the life or health of the pregnant woman

4           II. The findings on this issue are admissible at the criminal and civil trials of the defendant.  
5 Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30  
6 days to permit such a hearing to take place.

7           329:48 Construction. Nothing in this subdivision shall be construed as creating or recognizing a  
8 right to abortion.

9           329:49 Severability. If any provision of this subdivision or the application thereof to any person  
10 or circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
11 the subdivision which can be given effect without the invalid provision or application, and to this end  
12 the provisions of this subdivision are declared to be severable.

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AMENDED ANALYSIS

Replace paragraph 16:

16. Prohibits the distribution of state funds awarded by the department of health and human services to a reproductive health care facility for provision of abortion services, and prohibits a health care provider from performing an abortion if the gestational age of the fetus is at least 24 weeks, except in cases of incest or rape or to preserve the life or health of the pregnant woman.