

HB 1627-FN AS INTRODUCED

2016 SESSION

16-2661

01/09

HOUSE BILL ***1627-FN***

AN ACT relative to the protection of infants born alive.

SPONSORS: Rep. Groen, Straf. 10; Rep. V. Sullivan, Hills. 16; Rep. Murotake, Hills. 32

COMMITTEE: Judiciary

ANALYSIS

This bill establishes the born-alive infant protection act. Under this bill, a person shall not deny or deprive an infant of nourishment with the intent to cause or alter the death of an infant during an abortion.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT relative to the protection of infants born alive.

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

1 1 Findings and Purpose.

2 I. The general court hereby finds that:

3 (a) The state of New Hampshire has a paramount interest in protecting all human life.

4 (b) If an abortion results in the live birth of an infant, the infant is a legal person for all
5 purposes under the laws of New Hampshire.

6 (c) It is not an infringement on a woman's right to terminate her pregnancy for
7 New Hampshire to assert its interest in protecting an infant whose live birth occurred as the result
8 of an abortion.

9 (d) Without proper legal protection, newly born infants who have survived abortions
10 have been denied appropriate life-saving or life-sustaining medical care and treatment and have
11 been left to die.

12 II. Based on the findings in paragraph I, it is the purpose of this act to:

13 (a) Ensure the protection and promotion of the health and well-being of all infants born
14 alive in New Hampshire; and

15 (b) Mandate that health care providers give medically appropriate and reasonable life-
16 saving and life-sustaining medical care and treatment to all born-alive infants.

17 2 New Chapter; Born-Alive Infant Protection Act. Amend RSA by inserting after chapter 132-A
18 the following new chapter:

19 CHAPTER 132-B

20 BORN-ALIVE INFANT PROTECTION ACT

21 132-B:1 Title. This chapter may be known and cited as the born-alive infant protection act.

22 132-B:2 Definitions. In this chapter:

23 I. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any
24 other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy
25 of a woman with knowledge that the termination by those means will with reasonable likelihood
26 cause the death of the unborn child. Such use, prescription, or means is not an abortion if done
27 with the intent to:

28 (a) Save the life or preserve the health of the unborn child;

29 (b) Remove a dead unborn child caused by spontaneous abortion; or

30 (c) Remove an ectopic pregnancy.

31 II. "Born alive" or "live birth" means the complete expulsion or extraction of an infant from

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his or her mother, regardless of the state of gestational development, that, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including, but not limited to, one or more of the following:

- (a) Breathing;
- (b) A heartbeat;
- (c) Umbilical cord pulsation; or
- (d) Definite movement of voluntary muscles.

III. "Consent" means the voluntary agreement or acquiescence by a person of age and with the requisite mental capacity who is not under duress or coercion and who has knowledge or understanding of the act or action to which he or she has agreed or acquiesced.

IV. "Department" means the department of health and human services.

V. "Facility" or "medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person and which is licensed under RSA 151.

VI. "Infant" means a child of the species homo sapiens who has been completely expelled or extracted from his or her mother, regardless of the stage of gestational development, until the age of 30 days post birth.

VII. "Physician" means a person licensed to practice medicine under RSA 329.

VIII. "Premature" or "preterm" means occurring prior to the 37th week of gestation.

132-B:3 Requirements and Responsibilities.

I. A person shall not deny or deprive an infant of nourishment with the intent to cause or allow the death of the infant for any reason, including, but not limited to:

- (a) The infant was born with a handicap;
- (b) The infant is not wanted by the parent or guardian; or
- (c) The infant is born alive by natural or artificial means.

II. A person shall not deprive an infant of medically appropriate and reasonable medical care and treatment or surgical care.

III. The requirements of this section shall not be construed to prevent an infant's parent or parents or guardian from refusing to give consent to medical treatment or surgical care which is not medically necessary or reasonable, including care or treatment which either:

- (a) Is not necessary to save the life of the infant;
- (b) Has a potential risk to the infant's life or health that outweighs the potential benefit to the infant of the treatment or care; or
- (c) Is treatment that will do no more than temporarily prolong the act of dying when death is imminent.

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1 IV.(a) The physician performing an abortion shall take all medically appropriate and
2 reasonable steps to preserve the life and health of a born-alive infant.

3 (b) If an abortion performed in a hospital results in a live birth, the physician attending
4 the abortion shall provide immediate medical care to the infant, inform the mother of the live birth,
5 and request transfer of the infant to an on-duty resident or emergency care physician who shall
6 provide medically appropriate and reasonable medical care and treatment to the infant.

7 (c) If an abortion performed in a facility other than a hospital results in a live birth, a
8 physician attending the abortion shall provide immediate medical care to the infant and call 9-1-1
9 for an emergency transfer of the infant to a hospital that shall provide medically appropriate and
10 reasonable care and treatment to the infant.

11 V. If the physician is unable to perform the duties in paragraph IV because he or she is
12 assisting the woman on whom the abortion was performed, then an attending physician's assistant,
13 nurse, or other health care provider shall assume the duties outlined in paragraph IV.

14 VI. Any born-alive infant including one born in the course of an abortion procedure shall be
15 treated as a legal person under the laws of New Hampshire, with the same rights to medically
16 appropriate and reasonable care and treatment, and birth and death. If death occurs, certificates
17 shall be issued accordingly.

18 VII. If, before the abortion, the mother and if married, her husband stated in writing that
19 they do not wish to keep the infant in the event that the abortion results in a live birth, and this
20 writing is not retracted before the abortion, the infant, if born alive, shall immediately upon birth
21 become a ward of the department.

22 VIII. No person shall use any born-alive infant for any type of scientific research or other
23 kind of experimentation except as necessary to protect or preserve the life and health of the born-
24 alive infant.

25 132-B:4 Exceptions. The parent or parents, or guardian of a born-alive infant shall not be held
26 criminally or civilly liable for the actions of a physician, nurse, or other health care provider that
27 are in violation of this chapter and to which the parent or parents, or guardian did not give consent.

28 132-B:5 Criminal Penalties. Any physician, nurse, or other health care provider who
29 intentionally, knowingly, or negligently fails to provide medically appropriate and reasonable care
30 and treatment to a born-alive infant in the course of an abortion shall be guilty of a class B felony.

31 132-B:6 Civil and Administrative Action. In addition to whatever remedies are available under
32 the statutory law of New Hampshire, failure to comply with the requirements of this chapter shall:

33 I. Provide a basis for a civil action for compensatory and punitive damages. Any conviction
34 under this chapter shall be admissible in a civil suit as prima facie evidence of a failure to provide
35 medically appropriate and reasonable care and treatment to a born-alive infant. Any civil action
36 may be based on a claim that the death of or injury to the born-alive infant was a result of simple
37 negligence, gross negligence, wantonness, willfulness, intentional conduct, or another violation of
38 the legal standard of care.

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1 II. Provide a basis for professional disciplinary action under the appropriate disciplinary
2 board for the suspension or revocation of any license for physicians, licensed and registered nurses,
3 or other licensed, certified, or registered persons. Any conviction of any person for any failure to
4 comply with the requirements of this chapter shall result in the automatic suspension of his or her
5 license for a period of at least one year and the license shall be reinstated after that time only under
6 such conditions as the appropriate regulatory board shall require to ensure compliance with this
7 chapter.

8 III. Provide a basis for recovery for the parent or parents of the infant or the parent or
9 parents or guardian of the mother, if the mother is a minor, for the wrongful death of the infant
10 whether or not the infant was viable at the time the abortion was performed.

11 132-B:7 Construction.

12 I. Nothing in this chapter shall be construed to affirm, deny, expand, or contract any legal
13 status or legal right applicable to any member of the species *Homo sapiens* at any point prior to
14 being born alive.

15 II. Nothing in this chapter shall be construed to affect existing federal or state law
16 regarding abortion.

17 III. Nothing in this chapter shall be construed as creating or recognizing a right to
18 abortion.

19 IV. Nothing in this chapter shall be construed to alter generally accepted medical
20 standards.

21 132-B:8 Severability. If any provision of this chapter or the application thereof to any person or
22 circumstance is held invalid, the invalidity does not affect other provisions or application of the
23 chapter which can be given effect without the invalid provisions or application, and to this end the
24 provisions of this chapter are severable.

25 132-B:9 Right of Intervention. The general court, by joint resolution, may appoint one or more
26 of its members, who sponsored or cosponsored the act establishing this chapter in his or her official
27 capacity, to intervene as a matter of right in any case in which the constitutionality of this law is
28 challenged.

29 3 Effective Date. This act shall take effect January 1, 2017.

HB 1627-FN- FISCAL NOTE

AN ACT relative to the protection of infants born alive.

FISCAL IMPACT:

The Department of Health and Human Services, Office of Professional Licensure and Certification, Judicial Branch, Department of Corrections, and New Hampshire Association of Counties state this bill, as introduced, may increase state general fund expenditures and county expenditures by an indeterminable amount in FY 2017 and each year thereafter. There will be no impact on local expenditures, or on state, county, and local revenue.

METHODOLOGY:

The Department of Health and Human Services states this bill establishes the "Born-Alive Infant Protection Act," under which individuals are prohibited with depriving an infant of nourishment with the intent to cause or alter the death of an infant during an abortion. Proposed RSA 132-B:3, VII provides that "If, before the abortion, the mother and if married, her husband stated in writing that they do not wish to keep the infant in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the infant, if born alive, shall immediately upon birth become a ward of the department." The Department assumes this means it would become the guardian of the child by operation of law, and as guardian it would be responsible in the first instance for the cost of any medical treatment, placement, or services provided to the child until such time as the child could be legally freed for adoption and adopted. The Department has no basis for estimating the extent of the resulting expenditure increases.

The Office of Professional Licensure and Certification states the bill requires the Board of Medicine and the Board of Nursing to impose a minimum one-year suspension of a practitioner's license if convicted of failure to comply with the terms of the bill. Pursuant to statute as well as the constitutionally protected property interest that a licensee has in his or her license, both Boards must hold a hearing before they can take any action against a licensee. The known costs for each Board of Medicine hearing are \$1,288 (\$1,000 per diem cost plus \$288 mileage cost) and for each Board of Nursing hearing are \$1,400 (\$1,100 per diem cost plus \$300 mileage cost). In each case, the Boards may also need to retain experts to review and testify, as well as pay for additional staff time and prosecutorial representation. The Office is unable to estimate these costs.

The Office of Legislative Budget Assistant states this bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the Judicial Branch, Department of Corrections, and New Hampshire Association of Counties have provided the Office with potential costs associated with the penalties contained in this bill. See table below for average cost information:

	FY 2017	FY 2018
<u>Judicial Branch</u>		
Routine Criminal Felony Case	\$449	\$470
Complex Criminal Felony Case	\$869	\$895
Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2017 and FY 2018 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
<u>Department of Corrections</u>		
FY 2015 Average Cost of Incarcerating an Individual	\$34,336	\$34,336
FY 2015 Average Cost of Supervising an Individual on Parole/Probation	\$520	\$520
<u>NH Association of Counties</u>		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

The Department of Justice states the bill will have no fiscal impact.