

HB 677-FN - AS INTRODUCED

2015 SESSION

15-0766
01/09

HOUSE BILL ***677-FN***

AN ACT prohibiting the use of public funds for abortion services.

SPONSORS: Rep. Groen, Straf 10; Rep. R. Gordon, Rock 35

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies public funding of abortions.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT prohibiting the use of public funds for abortion services.

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

1 Findings and Purpose.

I. The general court of the state of New Hampshire finds that:

(a) The state of New Hampshire voluntarily participates in several federal programs that provide funds for family planning services. Among these programs are Title X of the Public Health Service Act which provides project grants to public and private agencies for family planning services, and Title XX of the Social Security Act which provides block grants to the states for social services, including family planning.

(b) Title X specifies that funds may not be used to finance abortions or abortion-related activity. Specifically, Title X provides that “none of the funds appropriated shall be used in programs where abortion is a method of family planning.”

(c) Title XX funds may not be used for the provision of medical care. Moreover, any Title XX funds used to match Title X funds may not be used to finance abortions or abortion-related activity.

(d) In addition to federal family planning funds, the state of New Hampshire also provides state-originated funds for family planning.

(e) The department of health and human services appropriates and distributes both federal and state funds for family planning services.

(f) Left unrestricted or unregulated, federal and state funds for family planning services can, in some cases, effectively and indirectly subsidize contractors, individuals, organizations, or entities performing or inducing abortions, referring for abortions, or counseling in favor of abortions through shared administrative costs, overhead, employee salaries, rent, utilities, and various other expenses.

(g) When the federal or a state government appropriates public funds to establish a program, it is entitled to define the limits of that program. *Rust v. Sullivan*, 500 U.S. 173, 194 (1991).

(h) The decision not to fund abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy. *Rust v. Sullivan*, 500 U.S. 173, 201 (1991).

(i) The government may rationally distinguish between abortion and other medical procedures because “no other procedure involves the purposeful termination of a potential life.” *Harris v. McRae*, 448 U.S. 297, 325 (1980).

(j) It is permissible for the state of New Hampshire to engage in unequal subsidization of

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1 abortion and other medical services to encourage alternative activity deemed in the public interest.
2 *Rust v. Sullivan*, 500 U.S. 173, 201 (1991).

3 (k) Requiring abortion-related activity to be completely separate from other activities
4 that receive federal and/or state funding in no way denies any right to engage in abortion-related
5 activities. *Rust v. Sullivan*, 500 U.S. 173, 198 (1991).

6 (l) Planned Parenthood's internal surveys show that approximately 70 percent of women
7 who visit their clinics do not follow up with referrals to other medical facilities to have important
8 health needs addressed. As a result, it is better for women to seek birth control and related services
9 from more comprehensive healthcare providers who can address a broad array of health issues that
10 Planned Parenthood clinics are not equipped to handle.

11 II. Based on the findings in paragraph I, the purposes of this act are to:

12 (a) Advance the state's policy that normal childbirth is in the best interests of the well-
13 being and common good of New Hampshire's citizens and should be given preference,
14 encouragement, and support by law and state action;

15 (b) Ensure that public funds are not used to subsidize abortions directly or indirectly;

16 (c) Ensure that no federal family planning funds appropriated or dispersed by the state
17 are used to pay the direct or indirect costs including, but not limited to, administrative costs or
18 expenses, overhead, employee salaries, rent, and telephone and other utilities of abortion procedures,
19 abortion referrals, or abortion counseling provided by "family planning contractors;"

20 (d) Ensure recipients of federal family planning funds that, as permitted by current law,
21 affiliate with an independent, unsubsidized entity that performs or provides abortions, abortion
22 referrals, or abortion counseling, do not use public funds to subsidize, either directly or indirectly,
23 the provision of abortions, abortion counseling, or abortion referrals; and

24 (e) Guarantee that no state family planning funds appropriated or dispersed pursuant to
25 state law shall be appropriated to or distributed to individuals, organizations, entities, or affiliates of
26 individuals, organizations, or entities that perform, induce, refer for, or counsel on behalf of elective
27 abortions.

28 2 New Chapter; Defunding the Abortion Industry and Advancing Women's Health Act. Amend
29 RSA by inserting after chapter 126-Y the following new chapter:

30 CHAPTER 126-Z

31 DEFUNDING THE ABORTION INDUSTRY AND ADVANCING WOMEN'S HEALTH ACT

32 126-Z:1 Title. This chapter may be known and cited as the "Defunding the Abortion Industry
33 and Advancing Women's Health Act."

34 126-Z:2 Definitions. In this chapter:

35 I.(a) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any
36 other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy
37 of a woman with the knowledge that the termination by those means will with reasonable likelihood

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1 cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with
2 the intent to:

3 (1) Save the life or preserve the health of the unborn child;

4 (2) Remove a dead unborn child caused by spontaneous abortion; or

5 (3) Remove an ectopic pregnancy.

6 (b) Further, an “elective abortion” means an abortion performed for reasons other than
7 threats to the life of the mother.

8 (c) “Affiliate” means an organization that owns or controls or is owned or controlled, in
9 whole or in part, by the other; related by shareholdings or other means of control; or a subsidiary,
10 parent, or sibling corporation.

11 (d) “Department” means the department of health and human services.

12 (e) “Facility” or “medical facility” means any licensed public or private hospital, clinic,
13 center, medical school, medical training institution, health care facility, physician’s office, infirmary,
14 dispensary, ambulatory surgical treatment center, or other institution or location wherein medical
15 care is provided to any person.

16 (f) “Family planning contractor” and “contractor” mean an individual, organization, or
17 entity that enters into a contract or agreement with the department of health and human services to
18 receive funds for and to provide family planning services.

19 (g) “Family planning services” means a range of acceptable methods to prevent, delay,
20 space, or otherwise time pregnancy, including, but not limited to, natural family planning methods
21 and infertility services. Family planning services do not include abortion, abortion referrals, or
22 counseling in favor of abortion.

23 (h) “Federal family planning funds” means any federal money appropriated or dispersed
24 by any state official, branch, department, or agency, in whole or in part, for family planning services,
25 including (but not limited to) funds under Title X and Title XX or other federal money accepted by
26 the state, in whole or in part, for family planning services.

27 (i) “Human cloning” means human asexual reproduction accomplished by (1) introducing
28 the genetic material from one or more human somatic or embryonic cells into a fertilized or
29 unfertilized oocyte whose nuclear material has been removed or inactivated before or after
30 introduction, so as to produce an organism at any stage of development with a human or
31 predominantly human genetic constitution; (2) artificially subdividing a human embryo at any time
32 from the two-cell stage onward, such that more than one human organism results; or (3) introducing
33 pluripotent cells from any source into a human embryo, nonhuman embryo, or artificially
34 manufactured human embryo or trophoblast, under conditions where the introduced cells generate
35 all or most of the body tissues of the developing organism.

36 (j) “Physician” means a doctor of medicine or osteopathy licensed under RSA 329 legally
37 authorized by the state to perform abortions.

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1 (k)(1) "Prohibited human research" means:

2 (A) Any medical procedures, scientific or laboratory research, or other kinds of
3 investigation that kill or injure the human subject (at any stage of development) of such research; or

4 (B) Any scientific or laboratory research or other kinds of investigation
5 conducted on fetal tissue obtained from an abortion, unless the research is done to obtain forensic or
6 other evidence in a rape or incest investigation.

7 (2) Prohibited human research shall not include:

8 (A) In vitro fertilization and accompanying embryo transfer to a woman's body;

9 (B) Research in the use of nuclear transfer or other cloning techniques to produce
10 molecules; deoxyribonucleic acid; or cells other than human embryos, tissues, organs, plants, or
11 animals other than humans; or

12 (C) Any diagnostic procedure that benefits the human subject of such tests.

13 (l) "State family planning funds" means funds dispersed for family planning services.

14 (m) "Unborn child" means the offspring of human beings from conception until birth.

15 126-Z:3 Comprehensive Prohibition on the Use of Public Funds.

16 I. Notwithstanding any other provision of law to the contrary, no public funds made
17 available to any institution, board, commission, department, agency, official, or employee of the state
18 of New Hampshire or of any political subdivision thereof, whether such funds are made available by
19 the government of the United States, the state of New Hampshire, or a local governmental
20 subdivision or are from any other public source, or moneys paid by students as part of tuition or fees
21 to a state university or a community college shall be used in any way for, to assist in, or to provide
22 facilities for an abortion or for training to perform an abortion.

23 II. It shall be unlawful for any person employed by the state or any agency or political
24 subdivision thereof, within the scope of the person's employment, to perform or assist an abortion.

25 III. No fund or committee authorized by the law for the special protection of women or
26 children shall be authorized to use or distribute public funds for the payment of abortions, abortion
27 referrals, abortion counseling, or abortion-related services.

28 IV. No organization that receives funds authorized or appropriated by the state shall use
29 those funds to perform or promote abortions, provide counseling in favor of abortion, or to make
30 referrals for abortions.

31 V. The limitations in paragraphs I - IV shall not apply to an abortion performed when the
32 life of the mother is endangered by a physical disorder, physical illness, or physical injury, including
33 a life-endangering physical condition caused by or arising from the pregnancy itself, or when the
34 pregnancy is the result of an act of rape or incest.

35 126-Z:4 Use of Public Facilities Prohibited.

36 I. It shall be unlawful for any public institution, public facility, public equipment, or other
37 physical asset owned, leased, or controlled by the state or any agency or political subdivision thereof

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1 to be used for the purpose of performing or assisting an abortion. This limitation shall not apply to
2 an abortion performed when the life of the mother is endangered by a physical disorder, physical
3 illness, or physical injury, including a life-endangering physical condition caused by or arising from
4 the pregnancy itself, or when the pregnancy is the result of an act of rape or incest.

5 II. It shall be unlawful for any public institution or facility to lease or sell its facilities or
6 property or permit the subleasing of its facilities or property to any physician or health facility for
7 use in the provision or performance of abortion. This limitation shall not apply to an abortion
8 performed when the life of the mother is endangered by a physical disorder, physical illness, or
9 physical injury, including a life-endangering physical condition caused by or arising from the
10 pregnancy itself, or when the pregnancy is the result of an act of rape or incest.

11 126-Z:5 Use of Education-Related Fees Prohibited. No applicant, student, teacher, or employee
12 of any public school or university shall be required to pay any fees that would, in whole or in part,
13 fund an abortion or insurance coverage for an abortion for any other applicant, student, teacher, or
14 employee of that school or university.

15 126-Z:6 Contracts with Abortion Providers Prohibited/Restricted. No licensed hospital, clinic, or
16 other health facility owned or operated by the state, a county, a city, or other governmental entity,
17 except the government of the United States, another state, or a foreign nation, shall enter into any
18 contract with any physician or health facility under the terms of which such physician or health
19 facility agrees to provide or perform abortions, except when the life of the mother is endangered by a
20 physical disorder, physical illness, or physical injury, including a life-endangering physical condition
21 caused by or arising from the pregnancy itself, or when the pregnancy is the result of an act of rape
22 or incest.

23 126-Z:7 Research Grants Restricted.

24 I. Public funds shall not be expended, paid, or granted to or on behalf of an existing or
25 proposed research project that involves the performance of abortion, human cloning, or prohibited
26 human research.

27 II. No moneys derived from an award of public funds shall be passed through to any other
28 research project, person, or entity involved with the provision or performance of abortion, human
29 cloning, or prohibited human research.

30 III. A research project that receives an award of public funds shall maintain financial
31 records that demonstrate strict compliance with this section.

32 IV. Any audit conducted pursuant to any grant or contract awarding public funds shall also
33 certify whether there is compliance with this section and shall note any noncompliance as a material
34 audit finding.

35 126-Z:8 School-Based Health Clinics.

36 I. No facility operated on public school property or operated by a public school district and no
37 employee of any such facility acting within the scope of such employee's employment shall provide

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any of the following services to public school students:

(a) Provision or performance of an abortion;

(b) Counseling in favor of an abortion;

(c) Referral for an abortion; or

(d) Dispensing drugs classified as “emergency contraception” by the federal Food and Drug Administration (FDA).

II. The department of education and local units of administration are prohibited from utilizing state funds for the procurement of abortions or distribution of drugs classified as “emergency contraception” by the FDA.

126-Z:9 Legal Funds Restricted.

I. No federal or state funds which are appropriated by the state for the provision of legal services by private agencies, as authorized by statute previously or subsequently enacted, may be used, directly or indirectly, to:

(a) Advocate for a legal “right” to abortion;

(b) Provide legal assistance with respect to any proceeding or litigation which seeks to procure any abortion or to procure public funding for any abortion; or

(c) Provide legal assistance with respect to any proceeding or litigation which seeks to compel the performance or assistance in the performance of any abortion or the provision of facilities for the performance of any abortion.

II. Nothing in this section shall be construed to require or prevent the expenditure of funds pursuant to a court order awarding fees for attorney’s services under the Civil Rights Attorney’s Fees Awards Act of 1976 (Public Law 94-559, 90 Stat. 2641) nor shall this section be construed to prevent the use of public funds to provide court-appointed counsel in any proceeding relating to RSA 132:32 – RSA 132:36.

126-Z:10 IOLTA Accounts Restricted. No Interest on Lawyer Trust Accounts (IOLTA) funds may be used, directly or indirectly, to do any of the following:

I. Advocate for a legal “right” to abortion;

II. Provide legal assistance with respect to any proceeding or litigation which seeks to procure or procure public funding for any abortion; or

III. Provide legal assistance with respect to any proceeding or litigation which seeks to compel the performance or assistance in the performance of any abortion or the provision of facilities for the performance of any abortion.

126-Z:11 Prohibitions on Use of Funds.

I. No federal or state family planning funds shall be used by contractors of the department to pay the direct or indirect costs, including, but not limited to, administrative costs and expenses, overhead, employee salaries, rent, and telephone and other utilities, of performing, inducing, referring for, or counseling in favor of abortions.

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1 II. No state family planning funds shall be granted, appropriated, or distributed to
2 individuals or organizations that perform, induce, refer for, or counsel in favor of abortions, or that
3 have affiliates that perform, induce, refer for, or counsel in favor of elective abortions.

4 126-Z:12 Limited Waiver. If the department concludes that compliance with RSA 126-Z:11, II
5 would result in a significant reduction in family planning services in any public health region of the
6 state, the department may waive the requirements of RSA 126-Z:11, II for the affected region to the
7 extent necessary to avoid a significant reduction in family planning services to the region. This
8 waiver shall include an expiration date, and no waiver shall extend beyond that date.

9 126-Z:13 Mandatory Certification of Compliance.

10 I. A family planning contractor, individual, organization, or entity applying for federal
11 family planning funds administered or distributed by the department shall certify in writing on
12 forms provided by the department that it will not, directly or indirectly, use the funds to perform,
13 induce, refer for abortion, or counsel in favor of abortions. Recipients of federal family planning
14 funds administered or distributed through the department shall annually submit a written
15 certification of continued compliance. Funds shall not be granted to any family planning contractor,
16 individual, organization, or entity until the required certification has been received.

17 II. A family planning contractor, individual, organization, or entity applying for state family
18 planning funds must certify in writing on forms provided by the department that it will not perform,
19 induce, refer for, or counsel in favor of elective abortions, and that it does not have affiliates that
20 perform, induce, refer for, or counsel in favor of elective abortions. Recipients of state family
21 planning funds through the department will submit an annual written certification of continued
22 compliance. Funds shall not be granted to any family planning contractor, individual, organization,
23 or entity until required certification has been received.

24 III. The department shall include in its financial audit a review of the use of appropriated
25 federal and state family planning funds to ensure compliance with this chapter.

26 126-Z:14 Failure to Comply, Recoupment of Funds, and Civil Penalties.

27 I. A family planning contractor that receives any federal and/or state family planning funds
28 and is found not to be in compliance with the requirements of RSA 126-Z:11 and RSA 126-Z:13 shall
29 be enjoined from receiving any future federal and/or state family planning funds and shall be liable
30 to return to the state the full amount of federal and/or state family planning funds received.

31 II. Any violation of this chapter shall subject the family planning contractor to a civil penalty
32 or fine up to \$2000 imposed by the department.

33 III. The attorney general may institute legal action to enforce:

34 (a) Recoupment, collection, or reimbursement of federal and/or state family planning
35 funds; and

36 (b) Collection of civil penalties or fines.

37 126-Z:15 Construction.

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1 I. Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

2 II. Nothing in this chapter shall be construed as creating or recognizing a right to federal
3 and/or state funds for family planning services.

4 126-Z:16 Right of Intervention. The general court, by joint resolution, may appoint one or more
5 of its members to intervene as a matter of right in any case in which the constitutionality of this law
6 is challenged.

7 126-Z:17 Severability. If any provisions of this chapter or the application thereof to any person
8 or circumstance is held invalid, the invalidity does not affect other provisions or applications of the
9 chapter which can be given effect without the invalid provisions or applications, and to this end the
10 provisions of this chapter are severable.

11 3 Effective Date. This act shall take effect January 1, 2016.

HB 677-FN FISCAL NOTE

AN ACT prohibiting the use of public funds for abortion services.

FISCAL IMPACT:

The Department of Health and Human Services, Judicial Branch and Department of Justice state this bill, **as introduced**, may decrease state revenue and expenditures by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on county and local revenue, or county and local expenditures.

METHODOLOGY:

The Department of Health and Human Services states this bill prohibits the use of public funds for abortion services. As such, the Department assumes this bill prevents it from entering into contracts with any health care provider who performs “non-federally required abortions” irrespective of whether public funds are utilized to procure that specific service. The Department states this bill will have an indeterminable fiscal impact. The Department assumes this bill also prevents it from entering into contracts advertising abortion services, or offering counseling services on all pregnancy options. The Department states it does not track which providers perform abortions, which is prohibited under this bill. The Department has identified three contracts with providers conducting family planning services that publicly advertise abortion services, totaling approximately \$450,000 per year, which may be impacted. The Department states that federal guidelines for Title X funds require women to be provided with information and counseling on pregnancy termination. Finally, the Department states that all family planning providers have emergency contraception available as a method of contraception. The Department reports this bill prohibits counseling on termination, and assumes all family planning contracts could be fiscally impacted with a total reduction of \$1,315,476.

The Judicial Branch states this bill provides for injunction actions against receiving future federal or state family planning funds and for civil liability for the return of such funds received. Violations of RSA 126-Z:14, II can result in civil penalties or a fine of up to \$2,000 imposed by the Department of Health and Human Services. The Branch reports it is responsible for the collection of civil penalties or fines which could result in an unknown number of both complex equity and complex civil cases. The table below contains the average cost information for such cases:

	FY 2016	FY 2017
<u>Judicial Branch*</u>		
Complex Equity Case	\$699	\$712
Complex Civil Case	\$707	\$728
*It should be noted average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine 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.		

The Department of Justice states it is authorized under this bill to institute legal action to enforce the recoupment, collection, or reimbursement of federal and state family planning funds, and the collection of civil penalties or fines. The Department is not able to determine the fiscal impact since it cannot estimate how many cases would be generated, or if any of these cases would be appealed to the Supreme Court.