

HB 1661-FN - AS AMENDED BY THE SENATE

23Mar2016... 0067h

05/12/2016 1974s

2016 SESSION

16-2114

01/05

HOUSE BILL

1661-FN

AN ACT relative to conversion therapy seeking to change a person's sexual orientation.

SPONSORS: Rep. Schleien, Hills. 37; Rep. Zaricki, Hills. 6; Rep. Eastman, Hills. 28; Rep. Sad, Ches. 1; Rep. C. Roberts, Hills. 4; Rep. Horrigan, Straf. 6; Rep. Simpson, Rock. 18; Rep. Eaton, Ches. 3

COMMITTEE: Health, Human Services and Elderly Affairs

AMENDED ANALYSIS

This bill prohibits persons licensed to provide counseling services to propose to engage or engage in conversion therapy with a person under 18 years of age.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT relative to conversion therapy seeking to change a person's sexual orientation.

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

1 1 New Chapter; Prohibiting Conversion Therapy on Minors. Amend RSA by inserting after
2 chapter 332-K the following new chapter:

3 CHAPTER 332-L

4 PROHIBITING CONVERSION THERAPY ON MINORS

5 332-L:1 Definition. In this chapter, "conversion therapy" means any practices or treatments
6 that seek to change an individual's sexual orientation or gender identity, including efforts to change
7 behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings
8 toward individuals of the same gender. Conversion therapy shall not include counseling that
9 provides assistance to a person undergoing gender transition, or counseling that provides
10 acceptance, support, and understanding of a person or facilitates a person's coping, social support,
11 and identity exploration and development, including sexual-orientation-neutral interventions to
12 prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not
13 seek to change an individual's sexual orientation or gender identity.

14 332-L:2 Prohibition; Violations, and Enforcement.

15 I. A person who is licensed to provide professional counseling under RSA 326-B, RSA 328-D,
16 RSA 329, RSA 329-B, RSA 330-A:16, RSA 330-A:18, RSA 330-A:19, RSA-A:20, RSA 330-A:21, or RSA
17 330-C, including, but not limited to, a nurse, physician assistant, physician, psychologist, clinical
18 social worker, clinical mental health counselor, marriage and family therapist, or licensed alcohol
19 and drug counselor, or a person who performs counseling as part of the person's professional
20 training for any of these professions, shall not engage in conversion therapy with a person under 18
21 years of age.

22 II. Any licensed professional, as listed in paragraph I, who proposes to engage or engages in
23 conversion therapy on a patient under 18 years of age shall be considered to have engaged in
24 unprofessional conduct and shall be subject to such discipline as the relevant licensing authority
25 deems appropriate.

26 332-L:3 Non-Infringement. Nothing in this chapter shall be construed to infringe on any
27 constitutional right, including the free exercise of religion.

28 2 Effective Date. This act shall take effect January 1, 2017.

HB 1661-FN- FISCAL NOTE

AN ACT relative to conversion therapy seeking to change a person's sexual orientation.

FISCAL IMPACT:

The Department of Health and Human Services, Judicial Branch, Office of Professional Licensure and Certification, and New Hampshire Association of Counties state this bill, as amended by the House (Amendment #2016-0067h), may increase state and county expenditures by an indeterminable amount in FY 2017 and each year thereafter. There will be no impact on state, county and local revenue or local expenditures.

METHODOLOGY:

The Department of Health and Human Services states this bill prohibits any person licensed to provide counseling from engaging in conversion therapy on a patient under the age of 18. In addition, the bill prohibits any person licensed to provide counseling from advertising conversion therapy. The bill provides the Department with concurrent jurisdiction to initiate proceedings for any violations, and requires the Department to develop rules relative to this matter. The Department states there may be some costs related to drafting the rules and bringing proceedings against practitioners, should that be necessary. The Department indicates such costs cannot be determined.

The Judicial Branch states this bill has two points of potential impact on the Branch. First, proposed RSA 332-L:2, II provides for professional discipline by the relevant licensing board upon a covered professional who engages in conversion therapy with a person under 18 years of age. All of the boards listed in proposed RSA 332-L:2, I provide for appeals to the Supreme Court pursuant to RSA 541. The Branch has no information on the number of potential administrative appeals. The Supreme Court has discretionary review of such appeals, therefore the Branch states another variable is whether the court accepts the appeal for full appellate review, for more limited review, or declines the appeal. The second point of potential fiscal impact on the Branch is proposed RSA 332-L:3, II, which provides that a violation of proposed RSA 332-L:3, I, shall be considered an unfair or deceptive act or practice under the Consumer Protection Act. The Branch has no information on the potential volume of such cases, but indicates such claims are often hard-fought and carry with them the potential for enforcement actions by the Attorney General under RSA 358-A:4, criminal actions under RSA 358-A:6, and private actions with the potential of treble damages RSA 358-A:10.

The Office of Professional Licensure does not have information on the potential number of disciplinary actions that may result from this bill and therefore cannot determine the impact on Board expenditures.

The New Hampshire Association of Counties states that under proposed RSA 332-L:3, II, a violation considered to be an unfair or deceptive act or practice under the Consumer Protection Act could result in additional prosecution and incarceration costs. County prosecution costs vary statewide and county incarceration costs range from \$85 to \$110 per day.

The Department of Justice states the Consumer Protection and Antitrust Bureau of the Department enforces the Consumer Protection Act. The Department indicates any investigations and enforcement actions brought under this section could be accomplished with existing resources and the bill would have no fiscal impact on the Department.

The Judicial Council assumes violations of the proposed statute by a person would take place within the context of that person's role as a professional therapist and it would be unlikely that he or she would meet the eligibility standards for appointment of counsel. The Council assumes most violations of the law would be brought in the first instance as class B misdemeanors and not trigger the right to counsel at State expense. The Council states that even though the proposed legislation could conceivably lead to future prosecutions, the legislation regulates commercial activities, and the Council assumes it would not experience an increase in expenditures. Typically anyone charged with a crime in the context of a business or occupation would be defended or indemnified by their insurer or employer and would obtain private counsel.