

HB 578-FN - AS INTRODUCED

2017 SESSION

17-0184

01/09

HOUSE BILL

***578-FN***

AN ACT                   relative to banning abortion after viability.

SPONSORS:           Rep. Murphy, Hills. 7; Rep. J. Moore, Hills. 21; Rep. Wuelper, Straf. 3; Rep. Souza, Hills. 43; Rep. Cordelli, Carr. 4; Rep. Notter, Hills. 21; Rep. V. Sullivan, Hills. 16; Rep. Seidel, Hills. 28; Sen. Carson, Dist 14; Sen. Reagan, Dist 17; Sen. Birdsell, Dist 19

COMMITTEE:       Judiciary

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ANALYSIS

This bill prohibits an abortion of a viable unborn child, except in cases of medical emergency.

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                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                      relative to banning abortion after viability.

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

1            1 Statement of Findings.

2            I. Children have been born as early as 21 weeks and 5 days gestation, and as small as 8.6  
3 ounces, and lived healthy, fulfilling lives.

4            II. It is the purpose of the state of New Hampshire to assert a compelling state interest in  
5 protecting the lives of viable unborn children.

6            2 New Chapter; Viable Unborn Child Protection Act. Amend RSA by inserting after chapter  
7 132-A the following new chapter:

8    CHAPTER 132-B

9    VIABLE UNBORN CHILD PROTECTION ACT

10            132-B:1 Definitions. In this chapter:

11            I. "Abortion" means:

12            (a) The act of using or prescribing any instrument, device, medicine, drug, or any other  
13 means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's  
14 womb; or

15            (b) The intentional termination of the pregnancy of a mother by using or prescribing  
16 any instrument, device, medicine, drug, or other means or substance with an intention other than  
17 to increase the probability of a live birth or to remove a dead or dying unborn child.

18            II. "Abortion facility" means a clinic, physician's office, or any other place or facility in  
19 which abortions are performed or induced other than a hospital.

20            III. "Conception" means the fertilization of the ovum of a female by a sperm of a male.

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

22            V. "Gestational age" means length of pregnancy as measured from the first day of the  
23 woman's last menstrual period.

24            VI. "Major bodily function" means, but is not limited to, functions of the immune system,  
25 normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory,  
26 endocrine, and reproductive functions.

27            VII. "Medical emergency" means a condition which, based on reasonable medical judgment,  
28 so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion  
29 of her pregnancy to avert the death of the pregnant woman or for which a delay will create a  
30 serious risk of substantial and irreversible physical impairment of a major bodily function of the  
31 pregnant woman.

**HB 578-FN - AS INTRODUCED**  
**- Page 2 -**

1 VIII. "Physician" means any person licensed to practice medicine under RSA 329.

2 IX. "Reasonable medical judgment" means a medical judgment that would be made by a  
3 reasonably prudent physician, knowledgeable about the case and the treatment possibilities with  
4 respect to the medical conditions involved.

5 X. "Unborn child" means the offspring of human beings in the womb.

6 XI. "Viability" or "viable" means that stage of fetal development when the life of the unborn  
7 child may be continued indefinitely outside the womb by natural or artificial life-supportive  
8 systems.

9 132-B:2 Abortion of Viable Unborn Child Prohibited; Exceptions; Physician Duties; Report.

10 I. Except in the case of a medical emergency, no abortion of a viable unborn child shall be  
11 performed or induced unless the abortion is necessary to preserve the life of the pregnant woman  
12 whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-  
13 endangering physical condition caused by or arising from the pregnancy itself, or when  
14 continuation of the pregnancy poses a serious risk of substantial and irreversible physical  
15 impairment of a major bodily function of the pregnant woman.

16 II. Except in the case of a medical emergency:

17 (a) Prior to performing or inducing an abortion upon a woman, the physician shall  
18 determine the gestational age of the unborn child in a manner consistent with accepted obstetrical  
19 and neonatal practices and standards. In making such determination, the physician shall make  
20 such inquiries of the pregnant woman and perform or cause to be performed such medical  
21 examinations, imaging studies, and tests as a reasonably prudent physician, knowledgeable about  
22 the medical facts and conditions of both the woman and the unborn child involved, would consider  
23 necessary to perform and consider in making an accurate diagnosis with respect to gestational age.

24 (b) If the physician determines that the gestational age of the unborn child is 21 weeks  
25 or more, prior to performing or inducing an abortion upon the woman, the physician shall  
26 determine if the unborn child is viable by using and exercising that degree of care, skill, and  
27 proficiency commonly exercised by a skillful, careful, and prudent physician. In making this  
28 determination of viability, the physician shall perform or cause to be performed such medical  
29 examinations and tests as are necessary to make a finding of the gestational age, weight, and lung  
30 maturity of the unborn child and shall enter such findings and determination of viability in the  
31 medical record of the woman.

32 (c) If the physician determines that the gestational age of the unborn child is 21 weeks  
33 or more, and further determines that the unborn child is not viable and performs or induces an  
34 abortion upon the woman, the physician shall report such findings and determinations and the  
35 reasons for such determinations to the health care facility in which the abortion is performed and to  
36 the board of medicine, and shall enter such findings and determinations in the medical records of  
37 the woman and in the individual abortion report submitted to the department under paragraph III.

38 (d) If the physician determines that the unborn child is viable, the physician shall not

1 perform or induce an abortion upon the woman except as described in paragraph I.

2 (e) Before a physician proceeds with performing or inducing an abortion upon a woman  
3 when it has been determined that the unborn child is viable, the physician shall first certify in  
4 writing the medical threat posed to the life of the pregnant woman, or the medical reasons that  
5 continuation of the pregnancy would cause a serious risk of substantial and irreversible physical  
6 impairment of a major bodily function of the pregnant woman. Upon completion of the abortion, the  
7 physician shall report the reasons and determinations for the abortion of a viable unborn child to  
8 the health care facility in which the abortion is performed and to the board of medicine, and shall  
9 enter such findings and determinations in the medical record of the woman and in the individual  
10 abortion report submitted to the department under paragraph III.

11 (f) Before a physician proceeds with performing or inducing an abortion upon a woman  
12 when it has been determined that the unborn child is viable, the physician who is to perform the  
13 abortion shall obtain the agreement of a second physician with knowledge of accepted obstetrical  
14 and neonatal practices and standards who shall concur that the abortion is necessary pursuant to  
15 subparagraph (e). This second physician shall also report such reasons and determinations to the  
16 health care facility in which the abortion is to be performed and to the board of medicine, and shall  
17 enter such findings and determinations in the medical record of the woman and the individual  
18 abortion report submitted to the department. The second physician shall not have any legal or  
19 financial affiliation or relationship with the physician performing or inducing the abortion, except  
20 that such prohibition shall not apply to physicians whose legal or financial affiliation or relationship  
21 is a result of being employed by or having staff privileges at the same hospital, physician network,  
22 or hospital network.

23 (g) Any physician who performs or induces a termination of pregnancy upon a woman  
24 when it has been determined that the unborn child is viable shall utilize the available method or  
25 technique of the termination of the pregnancy most likely to preserve the life or health of the  
26 unborn child. In cases where the method or technique of the termination of the pregnancy most  
27 likely to preserve the life or health of the unborn child would present a greater risk to the life or  
28 health of the woman than another legally permitted and available method or technique, the  
29 physician may utilize such other method or technique. In all cases where the physician performs an  
30 abortion upon a viable unborn child, the physician shall certify in writing the available method or  
31 techniques considered and the reasons for choosing the method or technique employed.

32 (h) No physician shall perform or induce an abortion upon a woman when it has been  
33 determined that the unborn child is viable unless there is in attendance a physician other than the  
34 physician performing or inducing the abortion who shall take control of and provide immediate  
35 medical care for a child born as a result of the abortion. During the performance of the abortion,  
36 the physician performing it, and subsequent to the abortion, the physician required to be in  
37 attendance, shall take all reasonable steps in keeping with good medical practice, consistent with  
38 the procedure used, to preserve the life or health of the viable unborn child; provided that it does

not pose an increased risk to the life of the woman or does not pose an increased risk of substantial and irreversible physical impairment of a major bodily function of the woman.

III.(a) An individual abortion report for each abortion performed or induced upon a woman shall be completed by her attending physician.

(b) An individual complication report for any post-abortion care performed upon a woman shall be completed by the physician providing such post-abortion care. This report shall include:

(1) The date of the abortion;

(2) The name and address of the abortion facility or hospital where the abortion was performed; and

(3) The nature of the abortion complication diagnosed or treated.

(c) All abortion reports shall be signed by the attending physician, and submitted to the department within 45 days from the date of the abortion. All complication reports shall be signed by the physician providing the post-abortion care and submitted to the department within 45 days from the date of the post-abortion care.

(d) The state department shall collect all abortion reports and complication reports and collate and evaluate all data gathered therefrom and shall annually, beginning January 1, 2019, publish a statistical report based on such data from abortions performed in the previous calendar year.

132-B:3 Rulemaking. The commissioner of the department shall adopt rules, pursuant to RSA 541-A, relative to:

I. Information required for reports due under RSA 132-B:2, III.

II. Content and format of all forms required under this chapter.

132-B:4 Penalty. Any person who negligently performs or attempts to perform an abortion in violation of RSA 132-B:2 shall be guilty of a class A misdemeanor. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed. The anonymity of any woman upon whom an abortion has been performed shall be preserved from public disclosure unless she consents.

132-B:5 Actions.

I. Any woman upon whom an abortion has been performed in violation of this chapter or the father of the unborn child who was the subject of such an abortion may maintain an action against the person who performed the abortion in a negligent violation of this chapter for actual damages. Any woman upon whom an abortion has been attempted in violation of this chapter may maintain an action against the person who attempted to perform the abortion in a negligent violation of this chapter for actual damages.

II. A cause of action for injunctive relief against any person who has negligently violated this chapter may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this chapter, a current or former licensed health care provider of the

1 woman upon whom an abortion has been performed or attempted to be performed in violation of  
2 this chapter, a county attorney with appropriate jurisdiction, the attorney general, or if the woman  
3 is a minor, her parent or guardian. The injunction shall prevent the abortion provider from  
4 performing further abortions in violation of this chapter in this state.

5 3 Effective Date. This act shall take effect January 1, 2018.

**HB 578-FN- FISCAL NOTE**

AN ACT relative to banning abortion after viability.

**FISCAL IMPACT:**    ☒ **State**                    ☒ **County**                    ☐ **Local**                    ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill prohibits any person from performing or inducing an abortion upon a woman when it has been determined that the probable gestational age of the woman's unborn child is 21 weeks or more, unless there is a medical emergency as defined under the new chapter law created by the bill. The bill requires the Department of Health and Human Services to:

- Receive reports on a schedule and in accordance with rules adopted pursuant to RSA 541-A from any physician who performs or induces or attempts to perform or induce an abortion.
- Issue a public report annually providing statistics for the previous calendar year compiled from all of the reports submitted during that year.
- Ensure that each report provide statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports.
- Ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.
- Adopt rules, pursuant to RSA 541-A, to schedule reports due and provide content and format of all forms required.

The Department states that, assuming its Health Statistics and Data Management Section (HSDM) will be the collection agent and data steward for the data on completed abortions as

contemplated by the bill, initial time will be needed to design the form to record the required information, create and test a database to store data taken from the data entry form, and train personnel in methods of accurate data entry. Estimated time required from a Planning Analyst (Labor Grade 24), for the initial development stage, and annual report creation in subsequent years will be approximately 7.5 hours per week, or 20% of annual time. Also, the efforts of an data clerk/secretary (Labor Grade 11) will be required at an estimated 9.375 hours per week (25% of weekly time) performing data entry on collected forms, and assistance in editing annual reports. The State Expenditure for this project for DHHS is estimated at between \$16,350 and \$31,750 per year from FY 2018 through FY 2021 respectively. The Department states that it does not have enough staff to prepare and report on data within the turnaround time expected in the bill. Implementation of the form for reporting abortions, after it is created, will also take time. Data on non-resident and New Hampshire residents who sought abortions out of state will take longer to acquire.

This bill contains penalties that may have an impact on the New Hampshire judicial system. 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 entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Class A Misdemeanor	\$71	\$72
Complex Equity Case	\$734	\$740
Complex Civil Case	\$727	\$735
It should be noted average case cost estimates for FY 2018 and FY 2019 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. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Contract Attorney – Misdemeanor	\$275/Case	\$275/Case*
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
<i>* The Council's budget request for the FY 2018-19 biennium includes an increase to \$300 per case for contract attorney misdemeanor cases.</i>		
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable



Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110
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Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

**AGENCIES CONTACTED:**

Departments of Health and Human Services and Justice, Judicial Branch, Judicial Council, and New Hampshire Association of Counties