

## CHOOSE LIFE FUND

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**House Bill 4680 (Substitute H-1)**

**Sponsor: Rep. Gary Newell**

**Committee: Transportation**

**First Analysis (3-30-04)**

**BRIEF SUMMARY:** The bill would amend the Michigan Vehicle Code to create a Choose Life Fund within the state treasury, to be administered by the state treasurer. The bill is tie-barred to Senate Bill 112, which would create a ‘choose life’ specialty fundraising license plate.

**FISCAL IMPACT:** House Bill 4680 would establish a ‘Choose Life Fund’ within the state treasury, but does not identify any revenue sources for the fund. As a result, the bill, alone, has no apparent fiscal impact. However, the bill is tie-barred to Senate Bill 112, a bill that would direct the Office of the Secretary of State to develop a new ‘choose life’ specialty license plate, with revenue from the sales directed to the fund.

### **THE APPARENT PROBLEM:**

Many women, often young and unmarried, become pregnant each year and they face their pregnancies and the birth of their children alone, without the help and assistance of their unborn children’s fathers, or of friends and family. Some of the women are victims of rape or incest, which further troubles their well-being during the period in which the fetus they carry comes to full term. Many of the expectant mothers are uninsured and without health benefits, or too poor to afford prenatal services and preventive health care that can protect their lives and those of their unborn children, as well as to ease their labor and delivery processes.

The prenatal care that poor women seek is customarily delivered by county health departments whose operations and services are overseen by county boards of commissioners. There, public health professionals work in public health clinics to provide the care the pregnant women need when motherhood is imminent.

According to committee testimony, there also are 140 crisis pregnancy centers located throughout the state. The crisis pregnancy centers are funded by private donations, and are private nonprofit service agencies. These centers, unlike county health department clinics, limit their services so that abortion information and services are not available to pregnant women. Instead, they provide free services that generally include reliable pregnancy tests, confidential consultations, information about options (including adoption and parenting one’s baby), and material assistance with maternity and baby items. Some also provide parenting and life skill classes in “earn and learn” programs in which pregnant women earn maternity clothes, baby clothes, diapers, cribs, car seats, and other equipment when they attend classes.

In order to provide funding for centers like these, the State of Florida enables its citizens to purchase “Choose Life” specialty license plates, and the revenue from the sale of those plates is distributed to crisis pregnancy centers in that state. The program has been operating since August 2000, and already 20,000 plates have been sold. As the state’s most popular plate and the fastest seller among an array of specialty plates offered during the past five years, the program has raised nearly \$500,000 during its first year of operation. However, a similar program in nearby Louisiana was blocked when a federal judge issued a preliminary injunction calling the “Choose Life” plates “very likely an unconstitutional restraint of free speech as it restricts the forum to only one view—that being the view of the state.”

Legislation to establish a “Choose Life” specialty license plate has been introduced in the Michigan Senate, as Senate Bill 112, where it has been referred to the Senate Committee on Transportation.

In an effort to increase pregnancy counseling options and the amount of available care for women whose pregnancies are unplanned or unwanted, and in doing so, to reduce the likelihood of abortions, the administrator of the “Choose Life Fund” could disburse revenue raised from the sale of specialty license plates to counties. The counties, in turn, would distribute the funds to nonprofit non-governmental agencies such as those in the network of single- and multi-county crisis pregnancy centers that promote adoption, and that strongly discourage abortion.

### ***THE CONTENT OF THE BILL:***

House Bill 4680 would amend the Michigan Vehicle Code to create a Choose Life Fund within the state treasury, to be administered by the state treasurer. Money in the fund would be distributed through the counties to nonprofit organizations providing services and counseling to women who have unplanned or unwanted pregnancies. Money could not be distributed to an agency that is involved or associated with referrals to abortion clinics or that provide abortion procedures. The bill is tie-barred to Senate Bill 112, which would create a new Choose Life license plate.

The bill specifies that the state treasurer could receive money or other assets from any source for deposit into the Choose Life Fund, and would direct investment of those funds, as well as credit to the fund the interest and earnings from fund investments. Money in the fund at the close of the fiscal year would not lapse to the general fund.

The state treasurer would be required to disburse money in the fund on a semiannual basis to each county, in proportion to the amount of donations received from issuing Choose Life vehicle registration plates in the county. Then, each county would be required to distribute the money received only to a non-governmental not-for-profit agency or organization that provided services and counseling to women who had unplanned or unwanted pregnancies. However, an agency that received money could not charge a fee for the services or counseling provided. Further, an agency that received money would be required to provide an annual accounting of the use of the money to the county. Under the bill, money could

not be distributed to an agency that was involved or associated with referrals to abortion clinics, or providing abortion procedures.

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***BACKGROUND INFORMATION:***

Specialty fundraising plates. Customarily government works to provide for the health, safety, and education of citizens by providing programs and services paid for by citizens' tax dollars. In these circumstances, government bureaucracies seek maximum efficiency in their delivery of services, whereas those in the private sector sell products and seek to maximize their profits. During recent times, government agencies have been encouraged by the social choice theorists in schools of public policy and the proponents of their theories, to adopt the customs and behaviors of businesses in the private sector. In doing so, government bureaucrats are advised to think and behave more like entrepreneurs--that is, to regard their services as products, to design and distribute those products in ways that satisfy consumer preferences, and to sell those products so that new streams of revenue flow into government coffers.

One product the Office of the Secretary of State provides to Michigan citizens is their annual vehicle license plate. Citizens buy the plate each year in order to lawfully drive their motor vehicles on the roads of this state and others. During the past decade, drivers have displayed a preference for customized license plates, and most especially plates that commemorate or support special events or affiliations in their lives. For example, during the 1997-98 fiscal year, 7,800 Michigan citizens bought Olympic specialty license plates, the proceeds from which fund the Olympic Training Center at Northern Michigan University, and an additional 1,400 citizens purchased various organizational plates. Subsequently, a Proud to be an American plate was introduced following the events of September 11, 2001. Between the creation of the two specialty license plates, the legislature passed laws in 1999 to establish a new fund-raising project in the Office of Secretary of State. That project permitted the secretary of state to design and sell 21 specialty license plates, the revenue from which is earmarked for the state's 15 public universities, the Children's Trust Fund, the Michigan Veterans Memorial, critical non-game wildlife habitat, the Future Farmers of America Endowment Fund, lighthouse renovation, and the water quality of the Great Lakes and inland lakes and rivers. In all, the state offers motorists a choice among 23 specialty license plates.

***FISCAL INFORMATION:***

House Bill 4680 would establish a 'Choose Life Fund' within the state treasury but does not identify any revenue sources for the fund. It does not, for example, establish a new fund-raising plate. As a result, the bill has no apparent fiscal impact.

However, House Bill 4680 (H-1) is tie-barred to Senate Bill 112 which would amend the Michigan Vehicle Code, to direct the secretary of state to develop a state-sponsored 'choose life' fund-raising registration plate, and a matching state-sponsored 'choose life'

collector plate. Under current law (section 811f), the application for an original fundraising plate must be accompanied by a \$25 donation, payment of the regular registration tax, and a \$10 service fee. Senate Bill 112 would earmark \$20 of the donation to the choose life fund, and \$5.00 of the donation to the state general fund.

The Department of State indicates that the current \$10 service fee covers its marginal costs of manufacturing specialty plates, but does not cover initial start-up costs, estimated to be approximately \$15,000 per new plate issue. (Once plate sales reached 3,000 units, the initial state cost of \$15,000 would be off-set by the \$5 General Fund earmark.)

### ***ARGUMENTS:***

#### ***For:***

This legislation would give Michigan Right to Life supporters a way to fund crisis pregnancy centers. According to committee testimony during the last legislative session when an identical pair of bills was passed by the House, the State of Florida (which reportedly has an array of 51 separate specialty license plates available to drivers) began selling a specialty license plate to fund crisis pregnancy centers in August 2000. Within the first year, more than 20,000 plates have been sold, and more than \$300,000 has been distributed to crisis pregnancy centers. This specialty plate was more popular than half of Florida's many plate options, selling at a rate of about 120 each day. Michigan has a stronger Right to Life organization than does Florida, so sales in this state could be as great or even greater. According to committee testimony, between \$300,000 and \$500,000 in revenue is expected each year.

#### ***For:***

In Michigan, a network of 140 crisis pregnancy centers that promote adoption and actively discourage abortion are funded by private contributions. The centers operate without government assistance. In contrast, the 52 agencies in the state that provide comprehensive family planning through the federal Title X program do receive government assistance for a broader array of services. Many women who have crisis pregnancies prefer to get their prenatal health counseling and care from organizations that promote adoption but that rule out abortion as an option. This bill would strengthen that network of agencies, helping to enhance the 140 agencies by ensuring a source of additional revenue from specialty license plate sales.

#### ***Against:***

This legislation proposes a special fund for yet another specialty license plate whose sale proceeds would be directed by the secretary of state to the state treasurer, and then subsequently by the state treasurer to officials at the county level of government, where final disbursements would be made to private, nonprofit groups of volunteers who are organized as crisis pregnancy centers. Because the organizations are not government agencies, they would not be required to open their books to government auditors, their meetings to the public or their records to Freedom of Information requests. They would be exempt from these kinds of public oversight despite the fact that the state's taxpayers fund the Office of the Secretary of State and the Department of Treasury who would

serve as the private organizations' collection agent. To ensure that the organizations use their funds in the manner intended, this legislation should be amended to enable an audit of the crisis pregnancy centers, and to require an annual report to the executive and legislative branches of government.

***Against:***

When identical legislation was debated during the last legislative session (House Bill 4759 and Senate Bill 466), an editorial in *The Detroit News* entitled "An Unwise License Plate Bill" (5-18-01), observed that the state should not be involved in setting up a fundraising license plate for pro-life counseling centers. The editors noted that although similar plates exist for supporters of preserving wildlife habitat, for a children's defense fund, for preserving the state's historic light houses, for honoring veterans, and for preserving water quality, "in the instance of this legislation...the state Treasury Department would route funds raised by the Choose Life plate to counties, which would in turn hand them over to private, nonprofit pro-life pregnancy support centers. But unlike, say lighthouse preservation, abortion is a particularly fraught public issue. Pro-lifers have fought to keep the state Medicaid program from paying for abortions. And while these plates and donations would be voluntary, they would still involve the state in administering funds for a pro-life cause." The American Civil Liberties Union concurs, noting that "abortion is the most divisive public issue in our state today, producing the most passionate debate, the least compromise, and the greatest lack of civility—often extending to violence." The state should not exacerbate the division among citizens by endorsing one side of the debate.

***Against:***

It is possible this bill would be found unconstitutional if challenged in a court of law. It could well violate the First Amendment through a principle known as viewpoint discrimination. Under this provision, a state may not create a forum (in this case a license plate), and then allow only one viewpoint to be expressed. Indeed, a federal judge temporarily blocked implementation of a similar bills adopted in Louisiana, asserting that the legislation aired only one side of a controversial debate in violation of free speech. That case, *Henderson v. Stadler*, 112 F.Supp.2d589 (E.D.La.2000) was filed by the Center for Reproductive Law and Policy against Louisiana's secretary of the Department of Safety and Corrections and the state treasurer after the legislature passed a bill to establish a Choose Life license plate, and a Choose Life fund. The District Court ruled in favor of the plaintiffs' First Amendment Freedom of Speech claim, but against its Establishment claim (ruling instead that the legislation had a secular purpose; it neither inhibited nor advanced religion; and, it did not foster excessive government entanglement in religion). In July 2003, a federal judge ordered Louisiana to end the production of all specialty license plates, including 'choose life' plates, finding that the state's specialty license plates discriminate based on viewpoint. In this vein and to the Freedom of Speech claim, the American Civil Liberties Union in its testimony noted that "Michigan can elect whether or not to permit political slogans on license plates. But once the decision has been made to permit one political slogan, other competing ideas must be afforded the opportunity to utilize the same state-sponsored forum. In other words, while there is no right to place a political slogan on a state-sponsored license plate, once

that is done the Constitution does not permit the state to discriminate in the future on the basis of viewpoint.”

In South Carolina and Tennessee, court challenges have kept ‘choose life’ specialty plates from being issues. On March 23, 2004, the 4<sup>th</sup> U. S. Circuit Court of Appeals upheld a lower court decision that declared South Carolina’s plate unconstitutional. The court wrote, “By limiting access to a specialty license plate to those who agree with its pro-life position, the State has distorted the forum in favor of its own viewpoint. South Carolina has engaged in viewpoint discrimination by allowing only the Choose Life plate.”

***Response:***

Case law differs from state-to-state. These court opinions issued in other regions of the country would not be binding on action taken by policymakers in Michigan.

***Reply:***

That is true. However, it is clear that opening up specialty plate program to highly charged one-sided political debate creates a flurry of legal battles, and undoubtedly cost the state and taxpayers’ sizable attorney and court fees. If the Michigan legislature chooses to create a specialty license plate for the ‘choose life’ fund, its members should also provide a plate for the opposite view and provide a state-sponsored ‘choose choice/choose pro-choice’ plate.

***POSITIONS:***

A similar bill last session was supported by Right to Life of Michigan, the Shared Pregnancy Women’s Center, and the Pregnancy Helpline.

Planned Parenthood Advocates of Michigan opposes the bill. (3-25-04)

The American Civil Liberties Union of Michigan opposes the bill. (3-25-04)

MARAL Pro-Choice Michigan opposes the bill. (3-25-04)

The Department of Michigan State Police is neutral on the bill. (3-25-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.