

Bill as Introduced

HB 324-FN - AS INTRODUCED

2005 SESSION

05-0089

05/10

HOUSE BILL

324-FN

AN ACT

relative to requirements for legal marriages.

SPONSORS:

Rep. Itse, Rock 9; Rep. Marple, Merr 9; Rep. Buhlman, Hills 27; Rep. Albert, Straf 1;
Rep. Gibson, Hills 19

COMMITTEE:

Judiciary

ANALYSIS

This bill provides that a man and woman whose marriage is solemnized by a minister of their religion shall be considered lawfully married. The bill is intended to create a distinction between a lawful marriage, which is solemnized by a minister without further state involvement, and a legal marriage, which has certain state procedural requirements and which may or may not be solemnized by a religious officiant.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to requirements for legal marriages.

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

1 1 New Section; Marriages; Lawful Marriage. Amend RSA 457 by inserting after section 37 the
2 following new section:

3 457:37-a Lawful Marriage.

4 I. Notwithstanding any other provision of this chapter, a man and a woman who are joined
5 in matrimony by a minister of their religion shall be recognized as lawfully married, provided that
6 the couple is outside the degrees of relationship prohibited by RSA 457:1 and RSA 457:2.

7 II. In this section, a "lawful marriage" means a marriage that is solemnized by a minister of
8 the religious body to which the couple belongs, without the completion of a marriage license or other
9 civil contractual requirements, other than the requirement that the minister submit a copy of the
10 record of the marriage to the division of vital records administration. A lawful marriage shall be
11 distinct from a legal marriage as that term is used in this chapter.

12 III. A minister intending to solemnize a lawful marriage under this section shall notify the
13 registrar of vital records of the intent prior to the marriage. Within 3 days of solemnizing the
14 marriage, the minister shall notify the registrar of vital records and submit a record of the marriage
15 to the division of vital records administration.

16 2 Completion of Marriage License Application. Amend RSA 457:22 to read as follows:

17 457:22 Completion of Marriage License Application. All persons proposing to be joined in *legal*
18 marriage within the state shall complete a marriage license application with all facts required by
19 RSA 5-C:7 to be entered in any town clerk's office. The clerk shall record the application in a book to
20 be kept for that purpose.

21 3 Penalty for Solemnization Without Valid Certificate. Amend RSA 457:34 to read as follows:

22 457:34 Penalty for Solemnization Without Valid Certificate. If a minister or justice of the peace
23 shall join any persons in *legal* marriage without having first received a certificate of the town clerk,
24 or shall join any persons in marriage with a certificate which he *or she* knows to be invalid, he *or*
25 *she* shall forfeit for each offense \$60.

26 4 Certified Copy of the Record. Amend RSA 457:38 to read as follows:

27 457:38 Certified Copy of Record. A copy of the record of a marriage, certified by a city or town
28 clerk [~~or by~~], the registrar of vital records, *or the minister pursuant to RSA 457:37-a*, shall be
29 received in all courts and places as evidence of the fact of the marriage.

30 5 Effective Date. This act shall take effect January 1, 2006.

LBAO
05-0089.1
12/14/04

HB 324-FN - FISCAL NOTE

AN ACT relative to requirements for legal marriages.

FISCAL IMPACT:

The Department of State states this bill will increase state general fund expenditures by \$60,526 in FY 2006, \$54,751 in FY 2007, \$57,222 in FY 2008, and \$59,777 in FY 2009. There will be no fiscal impact on state, county, and local revenue or county and local expenditures.

METHODOLOGY:

The Department states that in order to meet the requirements for "lawful marriage" report collection, review and quality assurance, compilation, data analysis, reporting, and certificate issuance, the Department's Division of Vital Records Administration (DVRA) assumes that one Planning Analyst/Data Systems position would be necessary. The position would continually input, analyze, and enhance the cleanliness and quality of the data, provide instruction for the additional providers of lawful marriage to assume maximal quality, serve as DVRA's resource and contact with regards to provider issues and questions, implement a data quality review program involving the lawful marriage providers and the DVRA, and provide ongoing data collection and reporting training of new and old providers. The Department estimates there would be 3,500 lawful marriages reported annually from an estimated 500 ministers or religious bodies in the State. These new sites would be added to the DVRA databases. An enhancement to the existing Vital Records web-based automated software would be required to process this additional category of lawful marriage. The DVRA would need to construct standard data collection forms for all of the NH ministers and religious bodies so that lawful marriages can be registered. Ministers and religious bodies would need training in how to fill out the forms, and DVRA would provide this training. Funds for printing and postage would be necessary for the dissemination of the reporting form. Data would be available through the DVRA. The Department states the new position would be hired at Labor Grade 24, Step 1, and require a personal computer, office furniture, office supplies and training. The Department would use a contractor for the design, development, and deployment of software enhancements to the current vital records software, and estimates 320 hours of development and testing in FY 2006, at a cost of \$59.71 per hour. Assuming a start date for the new position of October 1, 2005, and benefits at 44% of salary, the estimated fiscal impact is as follows:

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	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Salary	\$27,027	\$37,674	\$39,390	\$41,165
Benefits	11,892	16,577	17,332	18,112
Current Expenses	500	500	500	500
Equipment	2,000	0	0	0
Contracts	<u>19,107</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	\$60,526	\$54,751	\$57,222	\$59,777

Amendments

Rep. Bickford, Straf. 3
February 14, 2005
2005-0278h
05/09

Amendment to HB 324

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the solemnization of marriages.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Repeal. RSA 457:34, relative to the penalty for solemnization without a valid certificate of
8 marriage, is repealed.

9 2 Effective Date. This act shall take effect upon its passage.



2005-0278h

AMENDED ANALYSIS

This bill repeals the \$60 penalty for a minister or justice of the peace who performs a marriage without a valid marriage certificate.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 324

BILL TITLE: relative to requirements for legal marriages.

DATE: Feb. 8, 2005

LOB ROOM: 208

Time Public Hearing Called to Order: 1:00

Time Adjourned: 2:35

(please circle if present)

Committee Members: Reps. ~~Dokno, Soltani, Rowe, Desmarais, Mooney, Morris, Sorg, J. Wheeler, Pihoe, Buxton, N. Elliot, B. Francoeur, Mead, Hunt, Wald, Lasky, Potter, D. Cote, Espieis, Buzzell, Morrison and Shurtleff~~

Bill Sponsors: Reps. Itse, Marple, Gibson, Buhlman, Albert

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Itse, sponsor, supports

- bill is a matter of religious freedom
- "lawful" means there is no law against it
- "license" means legal but needs permission
- prior to 1911 there was only lawful marriage
- recognize holy matrimony as lawful marriage
- bill requires minister to notify state before ceremony for any objections
- has a hard time believing bill's fiscal note
- witness doesn't know how fraud can be avoided
- bill would allow a man and woman to be married by state or religious minister, but both marriages are subject to the marital laws of New Hampshire

Rep. Marple, co-sponsor, supports with amendment

- bill differentiates between lawful and legal
- corporate government shouldn't dictate one's religion

Rep. Bickford, supports with amendment

- religious and civil marriage ceremonies are separate and should be recognized
- clarification that state doesn't control religion

Ned White, supports

- looks at marriage as a covenant with God
- wanted church to marry him without a state marriage license
- civil contract vs holy matrimony
- bill would give right of church to many and state has no jurisdiction over dissolution of marriage

-HB 324 Testimony Continued

- doesn't want church as a 3rd party in a marriage
- believes state will not be able to interfere with divorce rights
- believes a couple could be left alone from a common law marriage

Claire Ebel, representing NHCLU, concerned about bill

- bill will solemnize union that state does not recognize

Seth Cohen, NH Liberty Alliance, supports

- common law marriage is only for the death of one spouse
- this bill would allow for a lawful marriage
- bill is an attempt to fix state interference with religious ceremonies
- bill would avoid debt collection from a living spouse
- doesn't think FN is accurate because it incorporates another staff person to handle the records

Respectfully submitted,

A handwritten signature in black ink that reads "Maureen Mooney". The signature is written in a cursive style with a large, looping 'M' and 'M'.

Rep. Maureen C. Mooney, Clerk

Testimony

First of all, the marriage license is Secular Contract between the parties and the State. The State is the principal party in that Secular Contract. The husband and wife are secondary or inferior parties. The Secular Contract is a three-way contract between the State, as Principal, and the husband and wife as the other two legs of the Contract. In the traditional sense a marriage is a covenant between the husband and wife and God. But in the Secular Contract with the state, reference to God is a dotted line, and not officially considered included in the Secular Contract at all. If the husband and wife wish to include God as a party in their marriage, that is a "dotted line" they will have to add in their own minds. The state's marriage license is "strictly secular,". Further, that what is meant by the relationship to God being a "dotted line", is, that the State regards any mention of God as irrelevant, even meaningless. This description of the marriage license contract, the related one, the other, "dotted line."

The traditional religious context, marriage is covenant between the husband and wife and God with husband and wife joined as one. This is not the case in the secular realm of the state's marriage license contract. The State is the Principal or dominant party. The husband and wife are merely contractually "joined" as business partners, not in any religious union. They may even be considered, connected to each other by another "dotted line." The picture being "painted" is that of a triangle with the State at the top and a solid line extending from the apex, the State, down the left side to the husband, and a separate solid line extending down the right side to the wife, a "dotted line" merely showing that they consider themselves to have entered into a religious union of some sort that is irrelevant to the State. This "religious overtone" is recognized by the State by requiring that the marriage must be solemnized either by a state official or by a minister of religion that has been "deputized" by the State (ie: all 501(c)(3) entities), to perform the marriage ceremony and make a return of the signed and executed marriage license to the State. Marriage is a strictly secular relationship so far as the State is concerned and because it is looked upon as a "privileged business enterprise" various tax advantages and other political privileges have become attached to the marriage license contract that have nothing at all to do with marriage as a religious covenant or bond between God and a man and a woman.

Should you wish to read a legal treatise on marriage, read one of the best; "Principles of Community Property," by William Defuniak. At the outset, he explains that Community Property law descends from Roman Civil Law through the Spanish Codes, 600 A.D., written by the Spanish juriconsults. In the civil law, the marriage is considered to be a for-profit venture or profit-making venture (even though it may never actually produce a profit in operation) and as the wife goes out to the local market to purchase food stuffs and other supplies for the marriage household, she is replenishing the stocks of the business. To restate: In the civil law, the marriage is considered to be a business venture, that is, a for-profit business venture. Moreover, as children come into the marriage household, the business venture is considered to have "borne fruit." Every contract must have consideration. The State offers consideration in the form of the actual license itself --the piece of paper, the Certificate of Marriage. The other part of consideration by the State is "the privilege to be regulated by statute." This privilege to be regulated by statute includes all related statutes, and all court cases

Holy Matrimony

as they are ruled on by the courts, and all statutes and regulations into the future in the years following the commencement of the marriage. In a way, the marriage license contract is a dynamic or flexible, ever-changing contract as time goes along - even though not realized by the husband and wife. Question ? can it really be considered a true contract as one becomes aware of the failure by the State to make full disclosure of the terms and conditions? A contract must be entered into knowingly, intelligently, intentionally, and with fully informed consent. Otherwise, technically there is no contract. Another way to look at the marriage license contract with the State is as a contract of adhesion, a contract between two disparate, unequal parties. Again, a flawed "contract." Such a contract with the State is said to be a "specific performance" contract as to the privileges, duties and responsibilities that attach. Consideration on the part of the husband and wife is the actual fee paid and the implied agreement to be subject to the state's statutes, rules, and regulations and all court cases ruled on related to marriage law, family law, children, and property. This contractual consideration by the bride and groom places them in a definite and defined- by-law position inferior and subject to the State. Very few people realize this, and the fact that it is very important to understand that children born to the marriage are considered by law as "the contract bearing fruit" -- meaning the children primarily belong to the State, even though the law never comes out and says so in so many words.

In this regard, children born to the contract regarded as "the contract bearing fruit," it is vitally important for parents to understand two doctrines that became established in the United States during the 1930s. The first is the Doctrine of *Parens Patriae*. The second is the Doctrine of *In Loco Parentis*. *Parens Patriae* means literally "the parent of the country" or to state it more bluntly -- the State is the undisclosed true parent. Along this line, a 1930s Arizona Supreme Court case stated that parents have no property right in their children, and have custody of their children during good behavior at the sufferance of the State. This means that parents may raise their children and maintain custody of their children as long as they don't offend the State, but if they in some manner displease the State, the State can step in at any time, exercise its superior status and take custody and control of its children -- the parents are only conditional caretakers.

Consider a few more technical details. The marriage license is an ongoing contractual relationship with the State. Technically, the marriage license is a business license allowing the husband and wife, in the name of the marriage, to enter into contracts with third parties and contract mortgages and debts. They can get car loans, home mortgages, and installment debts in the name of the marriage because it is not only a secular enterprise, but it is looked upon by the State as a privileged business enterprise as well as a for-profit business enterprise. The marriage contract acquires property throughout its existence and over time, it is hoped, increases in value. Also, the marriage contract "bears fruit" by adding children. If sometime later, the marriage fails, and a "divorce" results the contract continues in existence. The "divorce" is merely a contractual dissolution or amendment of the terms and conditions of the contract. Jurisdiction of the State over the marriage, over the husband and wife, now separated, continues and continues over all aspects of the marriage, over marital property and over children brought into the marriage. That is why family law and the Domestic Relations court calls "divorce" a dissolution of the marriage because the contract continues in operation but in amended or modified form. It should be pointed out that the marriage license contract is one of the strongest, most binding contractual relationships the States has on people. In closing it should be expressed

Holy Matrimony

that the marriage license as we know it didn't come into existence until after the Civil War and didn't become standard practice in all the states until after 1900, becoming firmly established by 1920. In effect, the states or governments appropriated or usurped control of marriages in secular form and in the process declared Common Law applicable to marriages "abrogated."

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 324-FN

BILL TITLE: relative to requirements for legal marriages.

DATE: February 24, 2005

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Lasky

Seconded by Rep. Morrison

Vote: 18-1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-1

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Maureen C. Mooney, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 324-FN

BILL TITLE: relative to requirements for legal marriages.

DATE:

~~2/24/05~~ 2/24/05

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Lasky

Seconded by Rep. ~~Hart~~ Morrison

Vote: (Please attach record of roll call vote.)

18 - 1

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Maureen C. Mooney, Clerk

JUDICIARY

Bill #: 324 Title: relative to requirements for legal marriage
 PH Date: 1/1/ Exec Session Date: 2/24/05

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Dokmo, Cynthia J, Chairman	✓	
Soltani, Tony F, V Chairman		
Rowe, Robert H	A	
Desmarais, Vivian J	✓	
Mooney, Maureen C, Clerk	✓	
Morris, Richard W	A	
Sorg, Gregory M	✓	
Wheeler, James E	✓	
Pilliod, James P	✓	
Buxton, Donald R	✓	
Elliott, Nancy J	✓	
Francoeur, Bea	✓	
Mead, Robert D	✓	
Hunt, John B	✓	
Wall, Janet G	✓	
Lasky, Bette R	✓	
Potter, Frances D	✓	
Cote, David E	✓	
Espieffs, Peter S	✓	
Morrison, Gail C	✓	
Buzzell, Bernard E		✓
Shurtleff, Stephen J	✓	

TOTAL VOTE: YEAS: 18 NAYS: 1
 Printed: 2/2/2005

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 324-FN**

TITLE: relative to requirements for legal marriages.

DATE: Feb. 24, 2005

CONSENT CALENDAR YES NO

- OUGHT TO PASS
- OUGHT TO PASS WITH AMENDMENT
- INEXPEDIENT TO LEGISLATE
- REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT (Include Committee Vote)

As the analysis of this bill states HB 324-FN is "intended to create a distinction between a lawful marriage which is solemnized by a minister without further state involvement, and a legal marriage, which has certain state procedural requirements and which may or not be solemnized by a religious officiant." Upon testimony and questioning of the sponsors it became apparent that there was no clear consensus or vision as to what they wanted this bill to do. The committee became equally confused. An amendment was submitted to repeal RSA 457:35 relative to the penalty for solemnization without a valid certificate of marriage. While some members of the committee felt that might have some merit, all in all, we hope if the sponsors want to clarify the "lawful marriage" section of Chapter 457, the Marriage Statutes, that they try to make their message clearer and bring the matter forth again.

Vote 18-1.

Rep. Bette R. Lasky
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Judiciary

HB 324-FN, relative to requirements for legal marriages. **INEXPEDIENT TO LEGISLATE**

Rep. Bette R. Lasky for Judiciary: As the analysis of this bill states HB 324-FN is "intended to create a distinction between a lawful marriage which is solemnized by a minister without further state involvement, and a legal marriage, which has certain state procedural requirements and which may or not be solemnized by a religious officiant." Upon testimony and questioning of the sponsors it became apparent that there was no clear consensus or vision as to what they wanted this bill to do. The committee became equally confused. An amendment was submitted to repeal RSA 457:35 relative to the penalty for solemnization without a valid certificate of marriage. While some members of the committee felt that might have some merit, all in all, we hope if the sponsors want to clarify the "lawful marriage" section of Chapter 457, the Marriage Statutes, that they try to make their message clearer and bring the matter forth again. **Vote 18-1.**