

Bill as Introduced

HB 1368 - AS INTRODUCED

2012 SESSION

12-2271

05/01

HOUSE BILL

1368

AN ACT

relative to real property held as a joint tenancy with rights of survivorship.

SPONSORS:

Rep. Manuse, Rock 5; Rep. Oligny, Rock 8; Rep. Lambert, Hills 27; Sen. White, Dist 9

COMMITTEE:

Judiciary

ANALYSIS

This bill requires a joint tenant with rights of survivorship to provide notice to the other joint tenants of his or her intent to sever the joint tenancy.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to real property held as a joint tenancy with rights of survivorship.

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

1 1 Conveyances of Realty and Interests Therein.

2 477:18 Tenants in Common; *Joint Tenants with Rights of Survivorship.*

3 I. Every conveyance or devise of real estate made to 2 or more persons shall be construed to
4 create an estate in common and not in joint tenancy, unless it shall be expressed therein that the
5 estate is to be holden by the grantees or devisees as joint tenants, or to them and the survivor of
6 them, or unless other words are used clearly expressing an intention to create a joint tenancy. The
7 addition, following the names of the grantees in the granting clause of a deed or devise, of the words
8 "as joint tenants with rights of survivorship" or "as tenants by the entirety" shall constitute a clear
9 expression of intention to create a joint tenancy.

10 II. *If the property is held in a joint tenancy with rights of survivorship, a joint*
11 *tenant may not sever the joint tenancy as to the joint tenant's interest in the property*
12 *without notice to the other joint tenants. Such notice shall be provided in writing, by*
13 *certified mail, to each of the joint tenants. Any deed or other instrument of conveyance*
14 *purporting to sever the joint tenancy shall include a notarized statement indicating that*
15 *the grantor has provided the notice required under this paragraph.*

16 2 Effective Date. This act shall take effect January 1, 2013.

Amendments



Amendment to HB 1368

1 Amend RSA 477:18, II as inserted by section 1 of the bill by replacing it with the following:

2

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II. If the estate is in joint tenancy with rights of survivorship, a joint tenant may not sever the joint tenancy as to that joint tenant's interest in the property without notice to the other joint tenants. Such notice shall be provided in writing, by certified mail, to each joint tenant at his, her, or its last known address. In any deed or other instrument of conveyance purporting to sever the joint tenancy, the grantor shall attest to compliance with the notice required under this paragraph.

Not offered

Rep. Rowe, Hills. 6
January 19, 2012
2012-0283h
05/01

Amendment to HB 1368

Not offered

1 Amend RSA 477:18, II as inserted by section 1 of the bill by replacing it with the following:

2

3 *II. If the estate is in joint tenancy with rights of survivorship, a joint tenant shall*
4 *not sever the joint tenancy as to that joint tenant's interest in the property without the*
5 *consent of the other joint tenants named in the deed.*

Amendment to HB 1368

- Page 2 -

2012-0283h

AMENDED ANALYSIS

This bill prohibits a joint tenant from severing a joint tenancy with rights of survivorship without the consent of the other joint tenants.

Rep. Weber, Ches. 2
January 26, 2012
2012-0406h
05/04

Amendment to HB 1368

1 Amend RSA 477:18, II as inserted by section 1 of the bill by replacing it with the following:

2

3 *II. If the estate is in joint tenancy with rights of survivorship, a joint tenant shall*
4 *not sever the joint tenancy without the recorded consent of the other joint tenants named in*
5 *the deed.*

2012-0406h

AMENDED ANALYSIS

This bill prohibits a joint tenant from severing a joint tenancy with rights of survivorship without the consent of the other joint tenants.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1368

BILL TITLE: relative to real property held as a joint tenancy with rights of survivorship.

DATE: January 10, 2012

LOB ROOM: 208 **Time Public Hearing Called to Order:** 2:00 pm

Time Adjourned: 2:25 pm

(please circle if present)

Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Wall, Potter, Weber and Watrous.

Bill Sponsors: Rep. Manuse, Rock 5; Rep. Oigny, Rock 8; Rep. Lambert, Hills 27; Sen. White, Dist 9

TESTIMONY

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

Rep. Manuse, sponsor

Introduced the bill. Property held jointly with rights of survivorship, changes to deed, must be completed only after notifying all names/parties on the deed. Notification should be sent by notarized document. This would eliminate one party changing a deed without the other party knowing of the change to the deed.

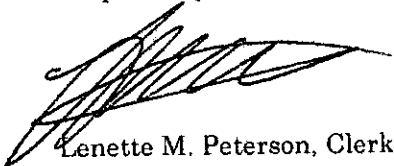
Ernest St. Pierre – supports

His mother-in-law had the deed changed. Rights to survivorship from joint tenants to tenants in common without her knowledge. It was legal, but she knew nothing of the change.

John MacIntosh, New Hampshire Bar Association – opposes

Concerns from the Bar have to do with notice required. The language of the statute could lead to title challenge. What happens when joint tenants' whereabouts are unknown? What if he/she says they didn't receive notice? What about return receipt? What if they do not want to give notice? In case of abuse? The law of unintended consequences comes to mind here.

Respectfully submitted,



Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1368

BILL TITLE: relative to real property held as a joint tenancy with rights of survivorship.

DATE: (Type HEARING DATE here) Jan. 10, 2012

LOB ROOM: 208

Time Public Hearing Called to Order: (Time) 2:00

Time Adjourned: (Time) 2:25

(please circle if present)

Committee Members: Reps. Rowe, Song, Souza, Kagan, Silva, Hopper, Andolina, Gupta, LaCasse, McClarren, Murphy, Palmer, Peterson, Wall, Potter, Weber and Watrous.

Bill Sponsors: Rep. Manuse, Rock 5; Rep. Oligny, Rock 8; Rep. Lambert, Hills 27; Sen. White, Dist 9

TESTIMONY

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

Rep. Manuse - property held jointly with rights of survivorship, changes to deed, must be completed only after notifying all names/parties on deed. Notification should be sent by notarized document. This would eliminated one party changing a deed, w/o the other not knowing of the change to deed.

Ernest St. Pierre - (s) his mother-in-law had the deed changed from joint tenants to tenants in common. Rights to survivorship from her knowledge. It was legal but she knew nothing of the change.

Respectfully submitted,

[Signature]

Lenette M. Peterson, Clerk

John MacIntosh - (?) concerns from Bar have to do w/
NM Bar Assoc. notice required. The language of statute
could lead to title challenge. What

happens when joint tenants whereabouts are
unknown? What if he/she says they didn't receive
notice? What about return receipt? What if they
do not want to give notice? In case of abuse?

The law of unintended consequences comes to mind
here.

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HOUSE BILL 1368

BILL TITLE: relative to real property held as a joint tenancy with rights of survivorship.

DATE: January 26, 2012

Subcommittee Members:

Reps. Giuda, Palmer, Souza, LaCassé, Hopper, Sorg, Potter and Weber

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #: 2012- 0406h
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

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

Moved by Rep. Souza

Seconded by Rep. Hopper

Vote: 6-0

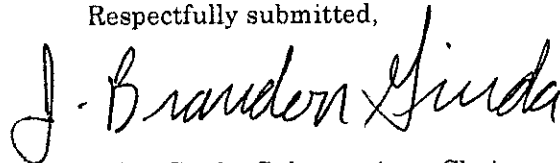
Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,



Rep. J. Brandon Giuda, Subcommittee Chair

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HOUSE BILL 1368

BILL TITLE: relative to real property held as a joint tenancy with rights of survivorship.

DATE: ~~{Type DATE}~~ 1-26-12

Subcommittee Members: Reps. {Type NAMES}

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #: 2012-0406L

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. *Sims*

Seconded by Rep. *Hopper*

Vote: 6-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. {Type NAME}
Subcommittee Chairman/Clerk

Testimony

Fiduciary Deed

Citizens Bank..... for John J. Brennan under the John J. Brennan 1989 Trust Agreement, grant to Joseph A. Corso and Claire T. Simmons, both unmarried, as joint tenants with rights of survivorship, of 30 Emerald Drive, Derry, New Hampshire, 03038, with Fiduciary Covenants;

A certain lot of land, with the buildings thereon, situated in Derry, County of Rockingham, State of New Hampshire, being shown as Lot 1 on plan entitled, "Edgewood Estates, Section 2, Final Subdivision Plat, Derry, NH, as subdivided for Sauvier Gregoire, July 1964, Edward N. Herbert, Surveyor", said Plan being recorded with Rockingham County Registry of Deeds as Plan No. 399, to which Plan reference may be made for a more particular description.

Believed but not Warranted to contain 29,500 square feet.

Subject to:

A. Any and all matters as shown on Plan No. 399 recorded with the Rockingham County Registry of Deeds.

B. Easement to Public Service Company of New Hampshire dated November 14, 1974 and recorded in said Registry at Book 2231, Page 1225.

Meaning and intending to convey.....

Notary seal dated March 12, 1999

Filed at Rockingham County Registry of Deeds March 15, 1999

Quitclaim Deed

Joseph A. Corso, being unmarried, of 109 Bypass 28, Derry, New Hampshire

For no consideration paid, grant to **Joseph A. Corso**, being unmarried, of 109 Bypass 28, Derry, NH

With QUITCLAIM COVENANTS,

A certain lot of land, with the buildings thereon, situated in Derry, County of Rockingham, State of New Hampshire, being shown as Lot 1 on plan entitled, "Edgewood Estates, Section 2, Final Subdivision Plat, Derry, NH, as subdivided for Sauvier Gregoire, July 1964, Edward N. Herbert, Surveyor", said Plan being recorded with Rockingham County Registry of Deeds as Plan No. 399, to which Plan reference may be made for a more particular description.

Believed but not Warranted to contain 29,500 square feet.

Subject to:

A. Any and all matters as shown on Plan No. 399 recorded with the Rockingham County Registry of Deeds.

B. Easement to Public Service Company of New Hampshire dated November 14, 1974 and recorded in said Registry at Book 2231, Page 1225.

Being the same premises conveyed to Joseph A. Corso and Claire T. Simmons from Citizens Bank dated March 12, 1999 and recorded in the Rockingham County Registry of Deeds at Book 3373, Page 1566.

The purpose of this is to break joint tenancy between the Joseph A. Corso and Claire T. Simmons.

Witness my hand this 20th day of November, 2009.

Witness

Joseph A. Corso

Notary seal

Filed at Rockingham County Registry of Deeds December 11, 2009

Fiduciary Deed

Know all men by these presents, That I Paul Corso of 11 Russet Lane, Marlboro, County of Middlesex, Commonwealth of Massachusetts, 01752, Executor of the Estate of Joseph A. Corso....for consideration paid grant to Bryan P. Plante...with FIDUCIARY COVENANTS a certain tract or parcel of land situated in Derry, County of Rockingham, Sate of New Hampshire, more particularly bounded and described as follows to wit:

A certain lot of land, with the buildings thereon, situated in Derry, County of Rockingham, State of New Hampshire, being shown as Lot 1 on plan entitled, "Edgewood Estates, Section 2, Final Subdivision Plat, Derry, NH, as subdivided for Sauvier Gregoire, July 1964, Edward N. Herbert, Surveyor", said Plan being recorded with Rockingham County Registry of Deeds as Plan No. 399, to which Plan reference may be made for a more particular description.

Believed but not Warranted to contain 29,500 square feet.

Subject to:

A. Any and all matters as shown on Plan No. 399 recorded with the Rockingham County Registry of Deeds.

B. Easement to Public Service Company of New Hampshire dated November 14, 1974 and recorded in said Registry at Book 2231, Page 1225.

Meaning and intending to describe and convey the same premises conveyed to Joseph A. Corso and Claire T. Simmons by deed of Citizens Bank dated March 12, 1999 and recorded in the Rockingham County Registry of Deeds in Book 3373 Page 1566. See also deed of Joseph A. Corso dated November 20, 2009 and recorded in the Rockingham County Registry of Deeds in Book 5074, Page 323.

The property is being conveyed with the Consent of the Legatees, Jennifer Corso and Paul Corso. This deed conveys the Estate's entire interest in the above described premises as is owned as tenants in common with Claire T. Simmons.

Said propert dose not constitute homestead property of the grantor, or of the legatees of said estate.

Notary seal dated September 20, 2011

Filed at Rockingham County Registry of Deeds October 5, 2011

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION ON HOUSE BILL 1368

BILL TITLE: relative to real property held as a joint tenancy with rights of survivorship.

DATE: February 14, 2012

LOB ROOM: 208

Amendments:

Sponsor: Rep. L. Weber OLS Document #: 2012 0406h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Lucy Weber

Seconded by Rep. Brian Murphy

Vote: 16-1 (Please attach record of roll call vote.)

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

Moved by Rep. Souza

Seconded by Rep. Andolina

Vote: 16-1 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Lenette M. Peterson Clerk

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION ON HOUSE BILL 1368

BILL TITLE: relative to real property held as a joint tenancy with rights of survivorship.

DATE: {Type DATE} 2/24/12

LOB ROOM: 208

Amendments:

Sponsor: Rep. *Weber* OLS Document #: 04066
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

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

Moved by Rep. *Weber*

Seconded by Rep. *Murphy*

Vote: (Please attach record of roll call vote.) 16-1

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) 16-1

Moved by Rep. *Souza*

Seconded by Rep. *Andolina*

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

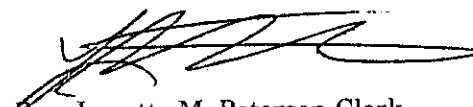
Souza

CONSENT CALENDAR VOTE: YES NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Lenette M. Peterson Clerk

JUDICIARY

Bill #: HB 1368 Title: _____

PH Date: 1/10/12

Exec Session Date: 2/7/12

Motion: OTPA

Amendment #: 0406h

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	✓	
Jorg, Gregory M, V Chairman		✓
Souza, Kathleen F	✓	
Hagan, Joseph M <i>Rapier</i>	✓	
Silva, Peter L	✓	
Hopper, Gary S	✓	
Andolina, Donald C	✓	
Giuda, J. Brandon	✓	
LaCasse, Paul D	✓	
McClarren, Donald B	✓	
Murphy, Brian JX	✓	
Palmer, Barry J	✓	
Peterson, Lenette M, Clerk	✓	
Wall, Janet G	✓	
Potter, Frances D	✓	
Weber, Lucy M	✓	
Watrous, Rick H	✓	
	16	1

TOTAL VOTE:

JUDICIARY

Bill #: HB 1368 Title: _____

PH Date: 1 / 10 / 12

Exec Session Date: 2 / 7 / 12

Motion: OT P

Amendment #: 0406h

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	✓	
Sorg, Gregory M, V Chairman		✓
Souza, Kathleen F	✓	
Hagan, Joseph M <i>Kapler</i>	✓	
Silva, Peter L	✓	
Hopper, Gary S	✓	
Andolina, Donald C	✓	
Giuda, J. Brandon	✓	
LaCasse, Paul D	✓	
McClarren, Donald B	✓	
Murphy, Brian JX	✓	
Palmer, Barry J	✓	
Peterson, Lenette M, Clerk	✓	
Wall, Janet G	✓	
Potter, Frances D	✓	
Weber, Lucy M	✓	
Watrous, Rick H	✓	
	16	1
TOTAL VOTE:		

Committee Report

REGULAR CALENDAR

February 21, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred HB 1368,

AN ACT relative to real property held as a joint tenancy with rights of survivorship. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Kathleen F Souza

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: JUDICIARY
Bill Number: HB1368
Title: relative to real property held as a joint tenancy with
rights of survivorship.
Date: February 21, 2012
Consent Calendar: NO
Recommendation: OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

This bill addresses a glitch in state title law. The committee heard testimony from intended heirs who did not indeed inherit property under current joint tenancy law. This bill ensures that if one joint tenant with right of survivorship decides to sever the joint tenancy, then the other joint tenant(s) must be informed. The committee amendment strengthens the protection of all parties by insisting that all parties not only be informed of proposed changes, as called for in the original bill, but that there is a record of their consent to the action.

Vote 16-1

Rep. Kathleen F Souza
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB 1368, relative to real property held as a joint tenancy with rights of survivorship. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kathleen F Souza for the **Majority** of JUDICIARY. This bill addresses a glitch in state title law. The committee heard testimony from intended heirs who did not indeed inherit property under current joint tenancy law. This bill ensures that if one joint tenant with right of survivorship decides to sever the joint tenancy, then the other joint tenant(s) must be informed. The committee amendment strengthens the protection of all parties by insisting that all parties not only be informed of proposed changes, as called for in the original bill, but that there is a record of their consent to the action.

Vote 16-1.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

February 21, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on JUDICIARY to which was referred HB 1368,

AN ACT relative to real property held as a joint tenancy with rights of survivorship. Having considered the same, and being unable to agree with the Majority, report with the following

Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Gregory M Sorg

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee: JUDICIARY
Bill Number: HB 1368
Title: relative to real property held as a joint tenancy with
rights of survivorship.
Date: February 21, 2012
Consent Calendar: NO
Recommendation: INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

As amended by the majority, this bill would create a species of concurrent ownership of real estate previously unknown in New Hampshire law. By taking away the right of a joint tenant unilaterally to defeat the survivorship feature of his or her undivided interest by conveying it to a third person, it would effectively transform joint tenancy into a modified form of tenancy by the entireties, which was abolished in New Hampshire in 1869 and which while it existed applied, and where it still exists still applies, only to husband and wife. This is objectionable on several grounds. First, the sponsors of the bill were seeking only to require a joint tenant wishing to dispose of his or her undivided interest simply to notify the other joint tenants immediately upon severing the joint tenancy, not to get their permission to do so. Second, redefining joint tenancy to mean something different from what it has historically meant will create needless confusion by compromising the relative immutability of basic principles and definitions of conveyancing law that enables titles to be searched far into the past and understood with confidence. Third, there was and is no evidence that the incident that inspired the filing of HB 1368 was other than an isolated one. The general court should not legislate by anecdote even when adhering to the remedy sought by the sponsors, and certainly should not legislate by anecdote when the remedy adopted has no relation not only to that anecdote but to any other problem known to or brought to the notice of the committee.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB 1368, relative to real property held as a joint tenancy with rights of survivorship.
INEXPEDIENT TO LEGISLATE.

Rep. Gregory M Sorg for the **Minority** of JUDICIARY. As amended by the majority, this bill would create a species of concurrent ownership of real estate previously unknown in New Hampshire law. By taking away the right of a joint tenant unilaterally to defeat the survivorship feature of his or her undivided interest by conveying it to a third person, it would effectively transform joint tenancy into a modified form of tenancy by the entireties, which was abolished in New Hampshire in 1869 and which while it existed applied, and where it still exists still applies, only to husband and wife. This is objectionable on several grounds. First, the sponsors of the bill were seeking only to require a joint tenant wishing to dispose of his or her undivided interest simply to notify the other joint tenants immediately upon severing the joint tenancy, not to get their permission to do so. Second, redefining joint tenancy to mean something different from what it has historically meant will create needless confusion by compromising the relative immutability of basic principles and definitions of conveyancing law that enables titles to be searched far into the past and understood with confidence. Third, there was and is no evidence that the incident that inspired the filing of HB 1368 was other than an isolated one. The general court should not legislate by anecdote even when adhering to the remedy sought by the sponsors, and certainly should not legislate by anecdote when the remedy adopted has no relation not only to that anecdote but to any other problem known to or brought to the notice of the committee.

Original: House Clerk
Cc: Committee Bill File

Draft Judiciary Committee Report

HB 1368

Rep Gregory M. Sorg for the Minority of Judiciary:

As amended by the majority, this bill would create a species of concurrent ownership of real estate previously unknown in New Hampshire law. By taking away the right of a joint tenant unilaterally to defeat the survivorship feature of his or her undivided interest by conveying it to a third person, it would effectively transform joint tenancy into a modified form of tenancy by the entireties, which was abolished in New Hampshire in 1869 and which while it existed applied, and where it still exists still applies, only to husband and wife. This is objectionable on several grounds. First, the sponsors of the bill were seeking only to require a joint tenant wishing to dispose of his or her undivided interest simply to notify the other joint tenants immediately upon severing the joint tenancy, not to get their permission to do so. Second, redefining joint tenancy to mean something different from what it has historically meant will create needless confusion by compromising the relative immutability of basic principles and definitions of conveyancing law that enables titles to be searched far into the past and understood with confidence. Third, there was and is no evidence that the incident that inspired the filing of HB 1368 was other than an isolated one. The general court should not legislate by anecdote even when adhering to the remedy sought by the sponsors, and certainly should not legislate by anecdote when the remedy adopted has no relation not only to that anecdote but to any other problem known to or brought to the notice of the committee.

(Revised February 12, 2012)

not approved WLC
Chair
approved by Stacker