

Bill as
Introduced

HB 371 - AS INTRODUCED

2013 SESSION

13-0753
05/03

HOUSE BILL

371

AN ACT repealing the statute recognizing cohabitation as a basis for legal marriage.

SPONSORS: Rep. Bickford, Straf 3

COMMITTEE: Judiciary

ANALYSIS.

This bill repeals the statute recognizing cohabitation as a basis of legal marriage.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT repealing the statute recognizing cohabitation as a basis for legal marriage.

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

1 1 Death Benefit for Police Officer or Firefighter Killed in Line of Duty. Amend RSA 21-I:29-a,
2 I(a) to read as follows:

3 (a) "Family" means the surviving spouse of the police officer or firefighter who was
4 wholly or partially dependent, in fact, upon the earnings of the police officer or firefighter; or, if there
5 is no surviving spouse, the surviving dependent child or dependent children, of such police officer or
6 firefighter or, if there is no surviving dependent child, [~~a surviving person qualifying as a common-~~
7 ~~law spouse pursuant to RSA 457:39, or if there is no surviving common-law spouse,~~] the surviving
8 adult child or adult children, or if there is no surviving adult child or adult children, the surviving
9 parent or parents of such police officer or firefighter. A surviving dependent child shall include a
10 dependent step-child whose expenses of daily living were substantially paid for by the decedent at
11 the time of the death.

12 2 Repeal. The following are repealed:

13 I. RSA 457:39, relative to cohabitation as a basis for legal marriage.

14 II. RSA 457:40, relative to proof of marriage in civil actions.

15 III. RSA 457:41, relative to proof of marriage in criminal cases.

16 3 Effective Date. This act shall take effect January 1, 2014.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 371

BILL TITLE: repealing the statute recognizing cohabitation as a basis for legal marriage.

DATE: January 29, 2013

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:44 am

Time Adjourned: 11:11 am

(please circle if present)

Committee Members: Reps. Marjorie Smith, Wall, P. Sullivan, Horrigan, Watrous, Hackel, Woodbury, Berch, Phillips, Gale, Heffron, Rowe, Luther, Sylvia, Hopper, Peterson, Takesian, D. Thompson, Kappler and Hagan.

Bill Sponsor: Rep. Bickford, Straf 3

TESTIMONY

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

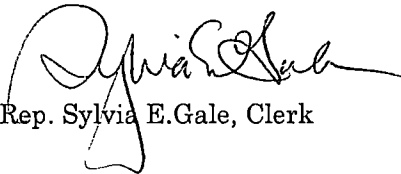
Rep. David Bickford, prime sponsor - support

Introduced the bill to the committee. He feels cohabitation status should not be "rewarded" by being able to claim benefits, i.e. Social Security, survivor other accrued compensation that may currently be awarded to non-married "spouse: under common law (applicable to deceased only).

Rep. George Lambert - oppose

Attorney Sarah Mattson, New Hampshire Legal Association - oppose

Respectfully submitted,


Rep. Sylvia E. Gale, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 371

BILL TITLE: repealing the statute recognizing cohabitation as a basis for legal marriage.

DATE: {Type HEARING DATE here} 1/29/13

LOB ROOM: 208 Time Public Hearing Called to Order: {Time} 10:44 AM

Time Adjourned: {Time} 11:11 AM

(please circle if present)

Committee Members: Reps. Marjorie Smith, Wall, P. Sullivan, Herrigan, Watrous, Hackel, Woodbury, Berch, Phillips, Gale, Heffron, Rowe, Luther, Sylvia, Hopper, Peterson, Takesian, D. Thompson, Kappler and Hagan. Hess

Bill Sponsor: Rep. Bickford, Straf 3

TESTIMONY

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

* Rep. D. Bickford - prime sponsor - presented bill to Cmte. feels cohabitation status should not be "rewarded" by being able to claim benefits, ie SS, survivor other accrued compensation that a may currently be awarded to non-married "spouse" under common-law - asserts that (applicable to deceased only)
Rep G. Lambert - opposes bill

Respectfully submitted,

Atty Sarah Mattson - NKLA - opposes

Rep. Sylvia E. Gale, Clerk

Testimony

HB 371 Judiciary Committee January 29, 2013

Rep. David A. Bickford

457:39 Cohabitation, etc. – Persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of 3 years, and until the decease of one of them, shall thereafter be deemed to have been legally married.

In other words if someone misrepresents (lies about) their marital status to the public for 3 years before their “Significant Other” dies, then upon that persons death the surviving SO becomes legally married....to the dead SO. The surviving “Significant Other” becomes eligible to take a share of the estate regardless of what the intentions of the deceased were and seek Social Security survivor benefits without ever indulging in the risk or responsibility of marriage.

This is akin to claiming to be a Veteran to get vet benefits.

This is not about situations where there has been a mistake by a J. P. or minister. Those errors become legal marriages under RSA 457:36 Effect of Informality.

If the couple wanted marriage benefits they should have married while they were both alive and taken responsibility for each other. This is an inappropriate tool for someone to take estates away from children or those designated in a will while the dead SO is left very limited ability to defend their ~~position~~ *intentions*.

As you can see having a marriage that only applies to a husband and wife excludes same sex couples which brings us to the issue of why only opposite sex couples should have a corner on deceiving the public for someone's estate? Why shouldn't a same sex couple also have the same equal opportunity. (The Equal Protection Clause of the 14th Amendment of the US Constitution was ratified in 1868. The Cohabitation statute, that creates legal marriage after death dates back to 1842. That's 26 years prior to equal protection.) This particular type of marriage for this purpose does not pass the compelling state interest test that would allow a state to restrict what classes of people may enjoy it.

At the very least this bill should be amended to include all possible cohabitations. *including same sex,*

Why put the courts through the arduous task of deciding who pretended to be married enough to qualify. *(The law is ambiguous.)* ^{however} **NHSC Bourassa 2008 helped narrow it a bit by requiring SO to "avowel" meaning declare they are married. ~~Despite the truth.~~**

It's a waste of the courts time and the states money to have to hear these cases because significant others see an opportunity to maximize their benefits. The S.O. could have just gotten married and saved a lot of trouble. Because of the uncertainty of the law, lawyers are ~~also~~ left trying to sort out if they have a case for their client or not and are weighed down with the thought they must do all possible for their client.

For the state to endorse and reward ~~those who~~ ^{for} practice deceiving the public with benefits and yet those same benefits would be denied an honest person that does not falsify there marital status is somehow wrong.

Repeal is the best solution.

Proof of Marriage

Remains 457:38 Certified Copy of Record. – A copy of the record of a marriage, certified by a city or town clerk or by the registrar of vital records, shall be received in all courts and places as evidence of the fact of the marriage.

Source. RS 147:14. CS 156:11. GS 161:12. GL 180:12. PS 174:14. PL 286:35. RL 338:38. RSA 457:38. 1981, 160:5. 2003, 319:72, eff. July 1, 2003.

Repeal 457:39 Cohabitation, etc. – Persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of 3 years, and until the decease of one of them, shall thereafter be deemed to have been legally married.

Source. RS 149:11. CS 158:19. GS 161:16. GL 180:16. PS 174:15. PL 286:36. RL 338:39.

Repeal 457:40 In Civil Actions. – In all civil actions, except actions for criminal conversation, evidence of acknowledgment, cohabitation, and reputation is competent proof of marriage.

Source. GS 161:17. GL 180:17. PS 174:16. PL 286:37. RL 338:40.

Repeal 457:41 In Criminal Cases. – In actions for criminal conversation, and in indictments for adultery, bigamy, and the like, there must be proof of a marriage in fact.

Source. GS 161:18. GL 180:18. PS 174:17. PL 286:38. RL 338:41.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 371

BILL TITLE: repealing the statute recognizing cohabitation as a basis for legal marriage.

DATE: February 5, 2012

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Takesian

Seconded by Rep. Thompson

Vote: 18-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

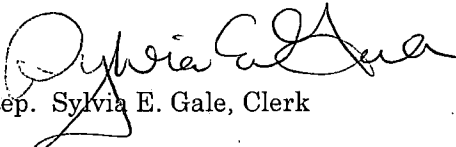
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0 YES

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Sylvia E. Gale, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 371

BILL TITLE: repealing the statute recognizing cohabitation as a basis for legal marriage.

DATE: ~~{Type DATE}~~ 2-5-13

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Takesian

Seconded by Rep. Thompson

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

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

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.) 18-0

CONSENT CALENDAR VOTE: {Type VOTE} ~~18~~-no objection

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Sylvia E. Gale, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 11:55:21 AM
Roll Call Committee Registers
Report

2013 SESSION

JUDICIARY

Bill #: HB 371 Title: repealing the statute recognizing cohabitation.....

PH Date: 11.29.13 Exec Session Date: 2.15.13

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Smith, Marjorie K, Chairman	18	
Wall, Janet G, V Chairman	1	
Hackel, Paul L <i>Carey, Laurie</i>	2	
Watrous, Rick H	3	
Sullivan, Peter M		
Horrigan, Timothy O	4	
Berch, Paul S	5	
Gale, Sylvia E, Clerk	6	
Heffron, Frank H	7	
Phillips, Larry R	8	
Woodbury, David	9	
Rowe, Robert H,	10	
Hagan, Joseph M	11	
Peterson, Lenette M,	12	
Hopper, Gary S		
Kappler, Lawrence M	13	
Luther, Robert A	14	
Sylvia, Michael J	15	
Takesian, Charlene F	16	
Thompson, David H	17	
TOTAL VOTE:	18	0

Committee Report

CONSENT CALENDAR

February 6, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred

HB 371,

**AN ACT repealing the statute recognizing cohabitation
as a basis for legal marriage. Having considered the
same, report the same with the following Resolution:**

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Charlene F Takesian

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB 371
Title:	repealing the statute recognizing cohabitation as a basis for legal marriage.
Date:	February 6, 2013
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill redefines a death benefit for a police officer or firefighter killed in the line of duty. In addition, this bill would repeal RSA 457:39, relative to cohabitation as a basis for legal marriage. The Committee concluded that this would have an unintended impact on people's rights, property rights, children and heirs of those who rely on RSA 457:39 for those rights. This bill would have totally revised the rights of those couples who cohabit as their basis for legal marriage.

Vote 18-0.

Rep. Charlene F Takesian
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB 371, repealing the statute recognizing cohabitation as a basis for legal marriage.

INEXPEDIENT TO LEGISLATE.

Rep. Charlene F Takesian for JUDICIARY. This bill redefines a death benefit for a police officer or firefighter killed in the line of duty. In addition, this bill would repeal RSA 457:39, relative to cohabitation as a basis for legal marriage. The Committee concluded that this would have an unintended impact on people's rights, property rights, children and heirs of those who rely on RSA 457:39 for those rights. This bill would have totally revised the rights of those couples who cohabit as their basis for legal marriage. **Vote 18-0.**

COMMITTEE REPORT

Takesien

COMMITTEE: Judiciary

BILL NUMBER: HB 371

TITLE: Repealing the Statute recognizing Cohabitation as a basis for legal marriage

DATE: 2-5-13 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

~~THIS BILL APPEARED TO REDEFINE A DEATH BENEFIT FOR A POLICE OFFICER OR FIREFIGHTER KILLED IN THE LINE OF DUTY.~~

~~HOWEVER THE COMMITTEE FELT THAT THE GREATER IMPACT OF~~

In addition ^{would} THIS BILL ~~WAS THE~~ REPEAL OF RSA 457:39 RELATIVE TO COHABITATION AS A BASIS FOR LEGAL MARRIAGE. ^{The committee concluded that this} ~~AND WOULD HAVE AN UNINTENDED~~ ^{would} IMPACT ON PEOPLE'S RIGHTS, PROPERTY RIGHTS, CHILDREN AND HEIRS OF THOSE WHO RELY ON RSA 457:39 FOR THOSE RIGHTS. THIS BILL WOULD HAVE TOTALLY REVISED THE RIGHTS OF THOSE COUPLES WHO COHABITATE AS THEIR BASIS FOR LEGAL MARRIAGE.

OK MKS

COMMITTEE VOTE: 18-0

RESPECTFULLY SUBMITTED,

Rep. Charlene Takesien

For the Committee

- | |
|---|
| <ul style="list-style-type: none"> • Copy to Committee Bill File • Use Another Report for Minority Report |
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CONSENT CALENDAR

MAJORITY REPORT

JUDICIARY

HB 371, repealing the statute recognizing cohabitation as a basis for legal marriage.

RECOMMENDATION: INEXPEDIENT TO LEGISLATE VOTE: 18-0

This bill redefines a death benefit for a police officer or firefighter killed in the line of duty. In addition, this bill would repeal RSA 457:39, relative to cohabitation as a basis for legal marriage. The Committee concluded that this would have an unintended impact on people's rights, property rights, children and heirs of those who rely on RSA 457:39 for those rights. This bill would have totally revised the rights of those couples who cohabit as their basis for legal marriage.

Rep. Charlene F. Takesian

OK
MKS