

Bill as  
Introduced

HB 295-FN-A - AS INTRODUCED

2019 SESSION

19-0015  
05/04

HOUSE BILL            ***295-FN-A***

AN ACT                establishing a special marriage officiant license.

SPONSORS:            Rep. Cushing, Rock. 21; Rep. Butler, Carr. 7; Rep. Altschiller, Rock. 19; Rep. DiLorenzo, Rock. 17; Rep. Schultz, Merr. 18; Rep. Frost, Straf. 16; Rep. McConnell, Rock. 11; Rep. Bushway, Rock. 21; Sen. Fuller Clark, Dist 21; Sen. Chandley, Dist 11; Sen. Hennessey, Dist 5; Sen. Carson, Dist 14

COMMITTEE:          Judiciary

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ANALYSIS

This bill establishes a special marriage officiant license which temporarily authorizes an individual to solemnize a marriage. A portion of the license fee shall be deposited in the fund for domestic violence programs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT establishing a special marriage officiant license.

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

1       1 New Section; Solemnization of Marriage; Special Marriage Officiant License. Amend RSA  
2 457 by inserting after section 32-a the following new section:

3       457:32-b Special Marriage Officiant License.

4       I. The secretary of state may issue a special marriage officiant license to temporarily  
5 authorize an individual to solemnize a marriage in this state. Any individual who applies for a  
6 special marriage officiant license shall register with the secretary of state, complete the registration  
7 form prescribed by the secretary of state, and submit an \$85 fee to the department of state. The  
8 secretary of state shall forward \$80 of the fee to the department of health and human services for  
9 deposit in the fund for domestic violence programs, established in RSA 173-B:15, and shall retain  
10 the remainder of the fee for administrative costs associated with issuance of the license.

11       II. Upon registration as a special marriage officiant, the individual shall be authorized to  
12 solemnize only the civil marriage designated on the registration form and shall receive proof of such  
13 authority from the secretary of state. The individual's authority to solemnize the marriage shall  
14 expire at the same time as the corresponding license.

15       2 Effective Date. This act shall take effect 60 days after its passage.

**HB 295-FN-A- FISCAL NOTE  
AS INTRODUCED**

AN ACT establishing a special marriage officiant license.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$59,100	\$59,100	\$59,100	\$59,100
<b>Expenditures</b>	\$0	\$0	\$0	\$0
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Special fund for domestic violence programs (RSA 173-B:15)			

**METHODOLOGY:**

This bill would authorize the Secretary of State to issue a special marriage officiant license to temporarily authorize an individual to solemnize a marriage in this state. The legislation requires completion of a registration form and submission of an \$85 fee, \$80 which is to be forwarded to the Department of Health and Human Services for deposit in the fund for domestic violence programs established in RSA 173-B:15, and \$5 to be retained by the Secretary of State for administrative costs associated with the issuance of the license.

The Department of Health and Human Services states the number of licenses that would be requested is unknown. No additional staff would be needed to forward the funds for deposit in the fund for domestic violence programs but the task would require a re-allocation of existing staff time for this purpose within the current budget.

The Secretary of State's Office assumes that the individuals obtaining the proposed license would be the same ones who obtain on-line ordained minister credentials to qualify for the special marriage solemnization license issued to ordained ministers. The fee for that license is \$25. It is estimated that 985 individuals apply for the existing license annually, generating approximately \$24,625 per year (985 x \$25). This revenue currently goes to the general fund. The Secretary of State assumes under the bill, the same number of applicants (985) will now pay \$85 and will generate \$83,725 (985 x \$85 = \$83,725). Of this amount, \$78,800 (985 x \$80 = \$78,800) would go to the domestic violence fund. The Secretary of State assumes \$4,925 (985 x \$5 = \$4,925) would be retained by the Secretary of State for deposit into the general fund.

	<b>Type of License</b>	
	<b>Ordained Minister</b>	<b>Proposed Marriage</b>
	<b>Online</b>	<b>Officiant</b>
<b>License Fee</b>	<b>\$25</b>	<b>\$85</b>
<b>Estimated Annual Number of Applicants</b>	<b>985</b>	<b>985</b>
<b>Annual Revenue to General Fund</b>	<b>\$24,625</b>	<b>\$4,925</b>
<b>Annual Revenue to Domestic Violence Fund</b>	<b>\$0</b>	<b>\$78,800</b>
<b>Total Annual Revenue</b>	<b>\$24,625</b>	<b>\$83,725</b>

<b>Total Projected Annual Revenue</b>	<b>\$83,725</b>
<b>Less Current Total Annual Revenue</b>	<b>\$24,625</b>
<b>Net Projected Annual Revenue</b>	<b>\$59,100</b>

**AGENCIES CONTACTED:**

Department of State and Department of Health and Human Services

HB 295-FN-A - AS AMENDED BY THE SENATE

05/30/2019 1966s

2019 SESSION

19-0015

05/04

HOUSE BILL **295-FN-A**

AN ACT establishing a special marriage officiant license and relative to the assignment of temporary justices to the supreme court.

SPONSORS: Rep. Cushing, Rock. 21; Rep. Butler, Carr. 7; Rep. Altschiller, Rock. 19; Rep. DiLorenzo, Rock. 17; Rep. Schultz, Merr. 18; Rep. Frost, Straf. 16; Rep. McConnell, Rock. 11; Rep. Bushway, Rock. 21; Sen. Fuller Clark, Dist 21; Sen. Chandley, Dist 11; Sen. Hennessey, Dist 5; Sen. Carson, Dist 14

COMMITTEE: Judiciary

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AMENDED ANALYSIS

This bill establishes a special marriage officiant license which temporarily authorizes an individual to solemnize a marriage. A portion of the license fee shall be deposited in the fund for domestic violence programs. The bill also permits a retired supreme court justice who is under the age of 75 to serve as a temporary justice on the court.

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Explanation: Matter added to current law appears in *bold italics*.  
Matter removed from current law appears ~~[in brackets and struckthrough]~~  
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STATE OF NEW HAMPSHIRE

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AN ACT establishing a special marriage officiant license and relative to the assignment of temporary justices to the supreme court.

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

1 1 New Section; Solemnization of Marriage; Special Marriage Officiant License. Amend RSA 457  
2 by inserting after section 32-a the following new section:

3 457:32-b Special Marriage Officiant License.

4 I. The secretary of state may issue a special marriage officiant license to temporarily  
5 authorize an individual to solemnize a marriage in this state. Any individual who applies for a  
6 special marriage officiant license shall register with the secretary of state, complete the registration  
7 form prescribed by the secretary of state, and submit an \$85 fee to the department of state. The  
8 secretary of state shall forward \$80 of the fee to the department of health and human services for  
9 deposit in the fund for domestic violence programs, established in RSA 173-B:15, and shall retain the  
10 remainder of the fee for administrative costs associated with issuance of the license.

11 II. Upon registration as a special marriage officiant, the individual shall be authorized to  
12 solemnize only the civil marriage designated on the registration form and shall receive proof of such  
13 authority from the secretary of state. The individual's authority to solemnize the marriage shall  
14 expire at the same time as the corresponding license.

15 2 Disqualification; Temporary Justices. Amend RSA 490:3, II to read as follows:

16 II. Upon the retirement, disqualification, or inability to sit of any justice of the supreme  
17 court, the chief justice, or *if necessary, the* senior associate justice of the supreme court may assign  
18 a *retired* justice of the supreme court who [~~has retired from regular active service~~] *is under the*  
19 *age of 75* or, if a retired supreme court justice is [~~unavailable~~] *unable or willing*, shall assign a  
20 justice of the superior court who has retired from regular active service to sit during supreme court  
21 sessions while the vacancy continues. The selection of a retired supreme or superior court justice  
22 shall be on a random basis. However if no retired supreme or superior court justice is available,  
23 then the selection of a replacement justice shall be made on a random basis from a pool of full-time  
24 justices of the superior court. In the event that no superior court justices are available, then the  
25 selection of a replacement justice shall be made on a random basis from a pool of full-time justices of  
26 the district and probate courts. The clerk of the supreme court shall maintain a list of superior,  
27 probate, and district court judges who are willing to serve as temporary supreme court judges.

28 3 Effective Date.

29 I. Section 1 of this act shall take effect 60 days after its passage.

30 II. The remainder of this act shall take effect upon its passage.

**HB 295-FN-A- FISCAL NOTE**  
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1966s)

AN ACT establishing a special marriage officiant license and relative to the assignment of temporary justices to the supreme court.

FISCAL IMPACT:     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	Approximately \$59,000+	Approximately \$59,000+	Approximately \$59,000+	Approximately \$59,000+
<b>Expenditures</b>	\$0	\$0	\$0	\$0
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Special fund for domestic violence programs (RSA 173-B:15)			

**METHODOLOGY:**

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The Department of Health and Human Services states the number of licenses that would be requested is unknown. No additional staff would be needed to forward the funds for deposit in the fund for domestic violence programs but the task would require a re-allocation of existing staff time for this purpose within the current budget.

The Secretary of State's Office assumes that the individuals obtaining the proposed license would be the same ones who obtain on-line ordained minister credentials to qualify for the special marriage solemnization license issued to ordained ministers. The fee for that license is \$25. It is estimated that 985 individuals apply for the existing license annually, generating approximately \$24,625 per year (985 x \$25). This revenue currently goes to the general fund. The Secretary of State assumes under the bill, the same number of applicants (985) will now pay \$85 and will generate \$83,725 (985 x \$85 = \$83,725). Of this amount, \$78,800 (985 x \$80 =



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**AGENCIES CONTACTED:**

Department of State and Department of Health and Human Services

**HB 295-FN-A FISCAL NOTE  
AS AMENDED BY THE SENATE (AMENDMENT #2019-1966s)**

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Less Current Total Annual Revenue	\$24,625
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**AGENCIES CONTACTED:**

Department of State and Department of Health and Human Services

# Amendments

e-mailed

Sen. Hennessey, Dist 5  
May 13, 2019  
2019-1923s  
05/04

over age 70 are  
allowed on a temp  
basis

specifies when less  
than 5 justice hear  
a case because of  
recusal or conflict  
the chief can appoint  
someone to sit on  
that case

Amendment to HB 295-FN-A

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

2

3 AN ACT establishing a special marriage officiant license and relative to the assignment of  
4 temporary justices to the supreme court.  
5

6 Amend the bill by replacing all after section 1 with the following:

7

8 2 Disqualification; Temporary Justices. Amend RSA 490:3, II to read as follows:

9 II. Upon the retirement, disqualification, or inability to sit of any justice of the supreme  
10 court, the chief justice, or *if necessary, the* senior associate justice of the supreme court may assign  
11 a *retired* justice of the supreme court who [~~has retired from regular active service~~] *is under the*  
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22 I. Section 1 of this act shall take effect 60 days after its passage.

23 II. The remainder of this act shall take effect upon its passage.

1923

Levesque -> Chandley  
3-2

OTPA  
Levesque -> Chandley  
3-2 (Carson/French)  
Levesque

2019-1923s

AMENDED ANALYSIS

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UNAPPROVED

Amendment to HB 295-FN-A

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2019-1966s

AMENDED ANALYSIS

This bill establishes a special marriage officiant license which temporarily authorizes an individual to solemnize a marriage. A portion of the license fee shall be deposited in the fund for domestic violence programs. The bill also permits a retired supreme court justice who is under the age of 75 to serve as a temporary justice on the court.



# Committee Minutes

**AMENDED  
SENATE CALENDAR NOTICE  
Judiciary**

Sen Martha Hennessey, Chair  
Sen Shannon Chandley, Vice Chair  
Sen Melanie Levesque, Member  
Sen Sharon Carson, Member  
Sen Harold French, Member

Date: April 18, 2019

**HEARINGS**

	Tuesday	04/23/2019
	(Day)	(Date)
Judiciary		SH 100
(Name of Committee)		(Time)
8:45 a.m.	<b>EXECUTIVE SESSION ON PENDING LEGISLATION</b>	
9:15 a.m.	<b>HB 295-FN-A</b>	establishing a special marriage officiant license.
9:35 a.m.	<b>HB 481-FN-A-LOCAL</b>	relative to the legalization and regulation of cannabis and making appropriations therefor.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**HB 295-FN-A**

Rep. Cushing  
Rep. Schultz  
Sen. Fuller Clark

Rep. Butler  
Rep. Frost  
Sen. Chandley

Rep. Altschiller  
Rep. McConnell  
Sen. Hennessey

Rep. DiLorenzo  
Rep. Bushway  
Sen. Carson

**HB 481-FN-A-LOCAL**

Rep. Cushing  
Rep. McGuire  
Rep. Knirk

Rep. O'Connor  
Rep. Webb  
Rep. Conley

Rep. Cleaver  
Rep. Tanner  
Sen. Reagan

Rep. Butler  
Rep. Wallace  
Sen. Hennessey

Jennifer Horgan 271-2609

Martha S. Hennessey  
Chairman

**Senate Judiciary Committee**  
*Jennifer Horgan 271-2609*

**HB 295-FN-A**, establishing a special marriage officiant license.

**Hearing Date:** April 23, 2019

**Time Opened:** 9:16 a.m.

**Time Closed:** 9:53 a.m.

**Members of the Committee Present:** Senators Hennessey, Chandley, Levesque, Carson and French

**Members of the Committee Absent :** None

**Bill Analysis:** This bill establishes a special marriage officiant license which temporarily authorizes an individual to solemnize a marriage. A portion of the license fee shall be deposited in the fund for domestic violence programs.

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**Sponsors:**

Rep. Cushing

Rep. Butler

Rep. Altschiller

Rep. DiLorenzo

Rep. Schultz

Rep. Frost

Rep. McConnell

Rep. Bushway

Sen. Fuller Clark

Sen. Chandley

Sen. Hennessey

Sen. Carson

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**Who supports the bill:** Representative Cushing; Senator Chandley; Representative Butler; Representative Altschiller; Jessica Eskeland; Alvin See

**Who opposes the bill:** Representative Abrami; Steven M. Dembow; Loretta Jay, JPUS; Sherry Farrell

**Summary of testimony presented in support:**

**Representative Cushing** (provided written testimony)

- Disclosed that he is a justice of the peace (JP).
- This creates a quick way for an individual to be an officiant of a marriage.
- The language is based on a similar Vermont statute, that has been in act for 15 years.
- Often a couple will want someone that is close to them to officiate the wedding.
- This does not change the underlying marriage laws.
- NH has ordained ministers and JPs that are currently able to officiate.
- This would create a special license.
- This will make NH a friendlier wedding venue state.
- There was a concern in the House that this would damage the sanctity of marriage, but the House rejected that concept.

- The proceeds from this would go to the domestic violence fund, similar to marriage licenses.
- Provided a court case (D'Antoni v. Commissioner, NHDHHS) that gave the decision that sending marriage funds to the domestic violence fund was appropriate.
- In VT, the license is \$100
- This is pegged at \$85, which is consistent with the NH advantage and what we charge officiants.
- Senator French asked what the scope of this is.
  - It is a one day, one couple license that is linked to the couple.
- Senator Hennessey asked if he would believe that a number of people in her area go to VT to take advantage of their special license.
  - Does believe that. Shared that he has a friend who made the decision to go to VT because they wanted to take advantage of that.

**Jessica Eskeland (NHCADSV) (provided written testimony)**

- The bulk of the funds from this license would go to the Domestic Violence Prevention Program (DVPP).
- The fund was established in 1981 and is run by the Coalition per the statute.
- This is a common practice in NH and across the country.
- This money is used in across the state for shelters, crisis lines, and more.
- Has been able to do tremendous work with these funds, but there is still much work to be done.
- The Coalition turned away 1,854 adults and 1,310 children over the past two years due to a lack of capacity.
- This is a fee and not a tax.
- The mercurial nature of general fund appropriations is very real.
- The would assist in ensuring more stable funding for the DVPP.

**Summary of testimony presented in opposition:**

**Representative Abrami**

- From a policy stand point, the act of marriage can be performed by anyone as long as the person signing the license has the right credentials.
- Questioned if someone who is coming into the state to do this will remember to do all of the paperwork correctly.
- The fee for this is \$85.
- An ordained minister from out of town only has to pay \$25 to do a onetime marriage license.
- Raised concerns that there is such a large disparity in the amounts.

**Steven Dembow**

- Is a practicing JP who has faithfully followed the rules and regulations involved in this process.
- In his opinion and after speaking with a number of folks, including town clerks, it would be unwise to allow this.
- The Merrimack town clerk shared that there tend to be a lot of issues with the out of state ordained ministers' paperwork, which causes significant work for the town officials and a delay in couples receiving their marriage licenses.

- Imagines those issues will increase if this legislation passes.
- JPs are sworn to follow their duties, while these individuals will be unaware of their duties.
- These potential issues could result in significant problems for a couple.
- These problems have arisen in MA, and CT blocked this from moving forward due to those concerns.
- Senator Levesque asked if he is familiar with the numbers from VT.
  - Is not. But when he officiated a wedding in VT he was required to send his ordination papers to a judge in order to be able to officiate. That process took three weeks, so there are potential legal hang-ups in that process as well.
- Senator Levesque pointed that they have a process in VT to deal with the forms.
  - That is for after the wedding. Before the wedding it took three weeks to get the go ahead to perform the wedding which was concerning. The clerks deal with forms not being filled out and people that don't know what they are doing. Concerned with the proper execution of documents to ensure this serious process goes smoothly.

**Loretta Jay** (Justice of the Peace Association) (provided written testimony)

- Spoke with the Town Clerk Association in VT and they have temporary licensure issues.
- The act of officiating marriage is not just saying 'I now pronounce you' it involves paperwork that the state relies on.
- The inaccurate filing of paperwork can cause significant issues for things like immigration and healthcare.
- The MA Town Clerk Association has described that up to 90% of temporary officiants are making errors in the paperwork.
- MA is looking at developing a study committee to review these issues.
- JPs are responsible and professional individuals, who are flexible and willing to work with the state to address this.
- CT has developed a plan to informally have a friend or family member officiate but have the JP witness and process the paperwork.
- Their Association would welcome the opportunity to work with the Tourism Department on how to train friends or family members to officiate in partnership with a JP.
- If you require the temporary license to partner with a JP, that would still encourage couples to come to NH, the funds would still go to the domestic violence fund, and the paperwork would be filed correctly.
- Unofficially, VT has had more than half of the paperwork filed with errors.
- Senator French asked how many JPs are in NH.
  - Does not know.
- Senator French asked what the criteria for becoming a JP is.
  - An individual needs another JP to attest to them. Professional JPs can take on traditional training.
- Senator French asked if the duties of JPs are limited to witnessing documents and performing marriages, unlike a notary public who can only witness signatures.

- Yes, believes there may be other tasks they can do in NH.
- Senator Chandley asked if JPs charge a fee for their services.
  - It depends. Some members requests donations to a charity, others say whatever a couple wants to pay, and others require a specific cost. Their members vary on this, but most work with a couple to write vows and make it a personal ceremony. It depends on the couple and what they are looking for.
- Senator Levesque asked about the healthcare insurance concerns.
  - Heard from MA and VT that because the paperwork was not processed or had errors, some couples who thought they were married were not. This can result in companies denying health insurance to couples because they were not technically married. This can also cause issues for immigration. One couple did not find out they were not actually married for a number of years.

**Sherry Farrell**

- Is a town clerk in Londonderry.
- There are so many errors and problems with the paperwork when people are not properly trained.
- This involves so much more that allowing a family member or friend to marry a couple.
- Worried that we are making marriage so easy.
- When a couple comes to her it is a special moment.
- Allowing anyone to marry a couple can reduce the significance of a marriage.
- Wants NH to hold firmly to what we hold dear.
- Senator French asked if anyone can be a JP, what is the difference between someone who became a JP, so they can do multiple marriages, and someone who does it one time.
  - To be a JP the paperwork the state mandates is involved and complicated, so individuals really have to think about it. The fee is minimal, but it has to be notarized with JP stamps on it and then it goes to the secretary of state's office before being accepted. It is not an easy process.
- Senator French asked if there is any special training to become a JP.
  - They receive a manual that outlines what the rules are.
- Senator French asked if everyone who applies for this license should get that set of rules.
  - That would be appropriate.

jch

Date Hearing Report completed: April 26, 2019

# Speakers









# Testimony



**Testimony of Jessica Eskeland, Public Policy Specialist  
NH Coalition Against Domestic & Sexual Violence  
HB 295, establishing a special marriage officiant license.**

**Senate Judiciary Committee**

**Tuesday, April 23, 2019**

Good morning Madam Chair, and members of the Committee,

For the record, my name is Jessica Eskeland and I am the Public Policy Specialist at the NH Coalition Against Domestic and Sexual Violence. The Coalition is the umbrella organization for 13 independent crisis centers located throughout the state. Last year, our crisis centers served over 15,000 victims of domestic and sexual violence, child abuse, human trafficking, stalking, and sexual harassment. I am here today to speak in support of HB 295.

First I'd like to express our deepest thanks to Representative Cushing for bringing this legislation forward. As written, this legislation stands to dramatically increase the ability of NH crisis centers to provide life-saving services to survivors of domestic and sexual violence across the state.

As you've heard, this legislation seeks to establish a special marriage officiant license, the bulk of the proceeds of which would be appropriated to a dedicated fund known as the Domestic Violence Prevention Program (DVPP).

The DVPP was created in 1981 when the state began setting aside a portion of every marriage license fee for domestic violence prevention services. This is a common funding process that is used by states all over the country to help fund domestic violence prevention efforts.

The Coalition manages the money in the DVPP and distributes it to the 13 domestic and sexual violence crisis centers across the state, which serve approximately 15,000 victims of domestic and sexual violence each year.

New Hampshire Coalition Against Domestic & Sexual Violence • PO Box 353 • Concord, NH 03302 • 603.224.8893

The money is used by crisis centers to accompany victims to court and to hospitals for emergency services, to provide trauma-informed services to children exposed to violence, and to operate domestic violence emergency shelters, in addition to operating the state's two 24-hour crisis hotlines.

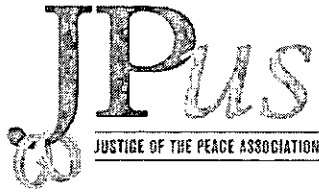
New Hampshire's crisis centers continue to turn away victims from domestic violence emergency shelters due to lack of capacity. In the past two years, a total of 1,854 adults and 1,310 children were denied access to emergency housing. That was during the same time the state contributed more than half a million in support services to the DVPP.

In addition to being able to provide safe housing, crisis centers hope to use this increase in funding to expand their work to help victims achieve financial empowerment, such as through budget planning, saving to afford a security deposit on an apartment, and restoring their credit. Advocates are also doing groundbreaking work connecting survivors and their children with affordable housing, allowing them to break free from abusive homes and create safer lives for themselves and their children.

Regarding any concerns that this is a "tax" versus a "fee", I am submitting for the Committee's consideration the NH Supreme Court decision, *Gayle B. D'Antoni v. the NH Department of Health and Human Services*, on which the NH Supreme Court unanimously agreed with the trial court's summary judgement to dismiss the case, affirming that the fee is a fee, and not a tax, and thus not unconstitutional.

While The Coalition and our 13 member programs are incredibly grateful for the appropriation for crisis centers in the budget, we keep an eye towards the mercurial nature of general fund appropriations, as history has shown us. The most consistent funding our programs receive are those that come from marriage license fees, making it one of the most sustainable resources victims and survivors can rely on. Passage of this legislation would have an incredible impact on crisis centers' ability to provide life-saving services to victims in our communities and to expand upon the financial empowerment and housing placement work that has proven so successful.

Once again, The Coalition is very grateful to the sponsor of this legislation. Thank you and I am happy to answer any questions the Committee may have.



New Hampshire State Senate  
May 23, 2019

**In Opposition to**

**HB 295-FN-A AN ACT ESTABLISHING A SPECIAL MARRIAGE OFFICIANT LICENSE**

Dear distinguished members of the New Hampshire State Senate:

I am the managing member of the Justice of the Peace Association (JPUS), a professional organization providing news, networking and education to justices of the peace (JP). Our membership includes New Hampshire JPs in addition to JPs from other New England states. **On behalf of our New Hampshire members, some of whose names are listed below, we ask you to vote No on HB 295, An Act establishing a special marriage officiant license.**

While the wedding ceremony is what most people think about when they consider an officiant, the recording of the marriage is most important, not what is said during the ceremony. JPs must attest to the accuracy of the marriage license, verify that the parties are willing participants and then complete all required paperwork and file it with the Town Clerk within six days of the ceremony. Failure to comply with requirements may result in a fine.

Relegating this official role to a temporary officiant is misguided for several reasons.

- 1. HB 295-FN-A fails to recognize that JPs bring expertise and competence to their role as marriage officiants.**

Justices of the Peace are professionals who have been appointed and entrusted to certify an act of marriage that is legally binding. The state of New Hampshire recognizes this responsibility, describing the JP's oath as "more than just ceremony (to) be taken seriously." Furthermore, JPUS also expects JPs to perform their duties with honor and integrity, as all members must adhere to and abide by its Code of Ethics <sup>Attachment 1</sup>.

In addition to complying with the terms of New Hampshire's *Justice of the Peace Manual*, JPs are continually seeking ways to improve the performance of their duties through trainings, research and collaboration with other JPs. Permitting lay officiants disrespects the practiced service that these professionals provide.

While we commend the impetus behind this bill to drive additional funding for domestic violence programs, we question the assumptions made in the bill's fiscal note to determine the number of anticipated applicants and the estimated income generated. On-line ministers are religious, while

temporary officiants, like JPs, would be secular. It is unlikely that couples would substitute one for the other. The temporary officiants would more likely supplant the professional JPs. It can be expected that professional JPs may resign if they feel belittled and the demand for services decreases. The JP application fee is \$75, and this will become another funding shortfall to the state.

**2. HB 295-FN-A will burden municipal town clerks with the costly responsibility of rectifying the inevitable errors made by Temporary Officiants.**

While the Secretary of the State (SOTS) may issue the temporary officiant designation, the marriage license must still be processed with the town clerk; the state statute doesn't allow for an alternative. This will result in a drain on already limited town resources as the town clerks try to complete the process. This is not just speculation. New Hampshire can learn from the temporary officiant experiences in neighboring Vermont and Massachusetts.

The Vermont Town Clerk Association reports numerous problems. Lucrecia Wonsor, Killington's town clerk and past president of the Vermont Town Clerk Association, wrote in an email, "The 'Temporary Officiant' option has put more burden on the Clerks to make sure that all rules have been followed and paperwork in place so that the marriage is legal. There is added cost and time to Clerks to 1) make sure the License is completed correctly and the proper paperwork is submitted, 2) to chase after Temporary Officiants to get the Authorization returned to us and 3) to record, index and store the Temporary Authorizations." The current president of the VTCA echoes these concerns.

Massachusetts town clerks complained they have problems with temporary officiants up to 90% of the time, and that dealing with them doubled the amount of work they had to do.<sup>1</sup>

When considering the likelihood of errors made, temporary officiants may very well overwhelm town clerks and burden municipalities, creating an unfunded mandate. This will negate any positive income generated from the application fees, and may actually create an overall loss.

**3. HB 295-FN-A would jeopardize the integrity of the marriage license.**

Marriage licenses are legal documents, and their accuracy is critical. Town clerks aren't just nit picking when they complain about errors; they (along with Justices of the Peace) have a legal obligation to make sure the information on the marriage license is accurate. Besides inadvertent errors, town clerks will have no way of ensuring the truthfulness of the information provided.

In New Hampshire no one under the age of 16 may wed. The JP is another partner in our system making sure that laws are followed, and our children are protected.

**4. If HB 295-FN-A is enacted, couples who use a temporary officiant may unwittingly jeopardize the validity of their marriage.**

While a couple's motivation to have a friend or family member officiate at their wedding ceremony is understandable, it is hard to imagine any would want it at the risk of invalidating their legal status as a married couple. Of course, when this happens the consequences can be serious.

James F. Hegarty, Southborough, MA Town Clerk wrote about one instance, "We had to resend corrected versions of the license on four occasions to the same person who was a One-Day Solemnizer for his buddy from college. The delays lasted more than a month and prevented us from being able to issue a certified copy of a valid marriage certificate. That in turn caused major headaches for the couple because the groom's employer would not add the bride to his medical insurance without proof of marriage. It also caused issues with a closing for a house."

**Alternative Solutions:**

The underlying problem with temporary officiant rules is a misperception about what officiating a wedding means. Most of us think of the ceremony. But the law says it is *the act of witnessing and legally documenting the affirmation between the couple*. There are alternatives to delegitimizing the role of the professional Justice of the Peace that will work for everyone.

JPlus has worked with legislators and state offices in Massachusetts and Connecticut on lay officiant rules. Governor Charlie Baker's office requested that JPlus submit a white paper<sup>2</sup> summarizing the problems with Massachusetts' One-Day rule. As a direct result, today a bill is pending before the its legislature for a commission to evaluate the rule.

JPs are flexible, and their goal is to help the couple achieve their vision for the day. JPlus encourages couples who want a friend or family member to officiate to work with a JP and make sure that the marriage is legal. This is what the Connecticut legislature opted for: forgoing a temporary officiant rule and leaving friends and family to informally work out the ceremony with a JP witnessing the event. New Hampshire could follow a similar path. Or, if deriving revenue is a motivating factor, then requiring that temporary officiants work with JPs would avoid burdening town clerks and would not risk JPs leaving the profession. In either scenario the JP would witness the ceremony (performed by the friend) and then submit the paperwork. The JP could also act as a coach, meeting with the couple and supporting the friend/family member through the process – still performing the legal aspects of the marriage (witnessing and submitting paperwork).

Furthermore, the Justice of the Peace Association is able and willing to work with the New Hampshire Tourism Department to promote the state as a destination wedding spot. Incorporating the family/friend into the ceremony with the JP would be part of a package. The anticipated revenue would still be forthcoming, but without the loss to municipalities and the state.



May 23, 2019

Justices of the Peace hold an important and obligatory role in New Hampshire. They take this responsibility very seriously, dedicating time and energy to perfecting their trade and performing their duties professionally. Relegating these responsibilities to an amateur is dismissive of the JP's value, negating the consequential duties that they swear to uphold. In addition, this bill will likely create very real problems for couples and municipal clerks, and call the validity of marriage documents into question. As a result, on behalf of the New Hampshire JPus membership, I respectfully urge you to **vote No to HB 295-FN-A, An Act establishing a special marriage officiant license**. Thank you for this opportunity to share our members' position on this important issue. I am available for further discussion.

Respectfully Submitted,



Loretta Jay, MA  
 Managing Member  
 Justice of the Peace Association  
 203.255.7703  
[lorettajay@JPus.org](mailto:lorettajay@JPus.org)

<sup>1</sup> Legislative Recommendations for Win-Win Solutions, submitted to Massachusetts Governor Charlie Baker, January 8, 2019. Accessed 3/5/2019, <https://www.findajp.com/jpus/5585-2/>

<sup>2</sup> Ibid

*The following New Hampshire JPus members and Justices of the Peace also endorse this testimony:*

<u>Name</u>	<u>Town</u>	<u>Email</u>
Lisa Olech	Ashland, NH	<a href="mailto:lisaa.olech@gmail.com">lisaa.olech@gmail.com</a>
Sandra Hair	Concord, NH	<a href="mailto:slh775@yahoo.com">slh775@yahoo.com</a>
Linda Abbott	Concord, NH	<a href="mailto:linda.abbott@comcast.net">linda.abbott@comcast.net</a>
Nancy Lavallee	Danville, NH	<a href="mailto:nlavallee@mvpc.org">nlavallee@mvpc.org</a>
Shelly Mead	Derry, NH	<a href="mailto:nhjpsellymead@gmail.com">nhjpsellymead@gmail.com</a>
Ann Shine	Dover, NH	<a href="mailto:ashine719@comcast.net">ashine719@comcast.net</a>

May 23, 2019

Jackie Brough	Epsom, NH	<a href="mailto:jackiebrough79@gmail.com">jackiebrough79@gmail.com</a>
Kathryn Pelletier	Exeter, NH	<a href="mailto:weddingsbyKathryn@comcast.net">weddingsbyKathryn@comcast.net</a>
John Scuto	Exeter, NH	<a href="mailto:blueskyweddings@comcast.net">blueskyweddings@comcast.net</a>
Amy Cann	Gonic, NH	<a href="mailto:nhjp@outlook.com">nhjp@outlook.com</a>
Jeffrey M. DeMarco, Esq.	Hampton Falls, NH	<a href="mailto:jeff@jeffdemarco-jp.com">jeff@jeffdemarco-jp.com</a>
Sue McPhee	Hillsborough, NH	<a href="mailto:psijourney@comcast.net">psijourney@comcast.net</a>
E. Ann Poole	Hillsborough, NH	<a href="mailto:eann@gsinet.net">eann@gsinet.net</a>
Kim Steward	Intervale, NH	<a href="mailto:kimthejp@gmail.com">kimthejp@gmail.com</a>
Kelly Hayden-Wimpory	Jefferson, NH	<a href="mailto:kellythejp@gmail.com">kellythejp@gmail.com</a>
Jean Lee	Kearsarge, NH	<a href="mailto:jeantheac@gmail.com">jeantheac@gmail.com</a>
Patricia Parent	Keene, NH	<a href="mailto:yourjusticeofthepeace@gmail.com">yourjusticeofthepeace@gmail.com</a>
Jane Rokes	Keene, NH	<a href="mailto:brokesjr1@ne.rr.com">brokesjr1@ne.rr.com</a>
Kathleen Sheerin	Laconia, NH	<a href="mailto:pepkat@metrocast.net">pepkat@metrocast.net</a>
Sharon Curole	Manchester, NH	<a href="mailto:scurole@comcast.net">scurole@comcast.net</a>
Carol Taylor	Manchester, NH	<a href="mailto:ct200557@yahoo.com">ct200557@yahoo.com</a>
Frank Saia	Merrimack, NH	<a href="mailto:fnsaia@comcast.net">fnsaia@comcast.net</a>
Carol Siebert	Merrimack, NH	<a href="mailto:jotp2008@yahoo.com">jotp2008@yahoo.com</a>
Steve Dembow	Merrimack, NH	<a href="mailto:steven.m.dembow@comcast.net">steven.m.dembow@comcast.net</a>
Paul Calabria	Milford, NH	<a href="mailto:Paulcalabria19@gmail.com">Paulcalabria19@gmail.com</a>
Irwin Bluestein	Nashua, NH	<a href="mailto:irwin.bluestein@gmail.com">irwin.bluestein@gmail.com</a>
Katie Ward	Nashua, NH	<a href="mailto:justicekatieward@yahoo.com">justicekatieward@yahoo.com</a>

May 23, 2019

Judith Wilhelmy	Nashua, NH	<a href="mailto:jawilhelmy@comcast.net">jawilhelmy@comcast.net</a>
Susan Miele	Nashua, NH	<a href="mailto:susanmiele@gmail.com">susanmiele@gmail.com</a>
Debby Pawlencio	Newfields, NH	<a href="mailto:dpawlencio@yahoo.com">dpawlencio@yahoo.com</a>
Robert McDevitt	Newport, NH	<a href="mailto:bob@nhmcdevitt.com">bob@nhmcdevitt.com</a>
Jeanne Pounder	North Conway, NH	<a href="mailto:willownjp@gmail.com">willownjp@gmail.com</a>
Cindy Dumont	North Hampton	<a href="mailto:c.a.dumont@comcast.net">c.a.dumont@comcast.net</a>
Ann Chadwick	Pelham, NH	<a href="mailto:sunshineac25@comcast.net">sunshineac25@comcast.net</a>
Patricia Cook	Plaistow, NH	<a href="mailto:patcookjp@outlook.com">patcookjp@outlook.com</a>
Mary Carey Foley	Portsmouth, NH	<a href="mailto:foley229@aol.com">foley229@aol.com</a>
John Lucas	Rochester, NH	<a href="mailto:jlucasjp@yahoo.com">jlucasjp@yahoo.com</a>
Dave Berman	Rumney, NH	<a href="mailto:bermbits@gmail.com">bermbits@gmail.com</a>
Maria Doyle	Salem, NH	<a href="mailto:mdoylenh@gmail.com">mdoylenh@gmail.com</a>
Janet Moriarty	Somersworth, NH	<a href="mailto:jdoriarty@myfairpoint.net">jdoriarty@myfairpoint.net</a>
Pius Murray	Somersworth, NH	<a href="mailto:charliem1957@hotmail.com">charliem1957@hotmail.com</a>
Sharon Croteau	Winchester, NH	<a href="mailto:scroteau@scshelps.org">scroteau@scshelps.org</a>
Maureen Robinson	Winchester, NH	<a href="mailto:wetmore9@yahoo.com">wetmore9@yahoo.com</a>

May 23, 2019

## Attachments

### Attachment 1: Code of Ethics

#### Code of Ethics Justice of the Peace Association

As a member of the Justice of the Peace Association, having accepted the responsibility of the office of Justice of the Peace, in order to faithfully discharge my duties with both competence and integrity, I resolve that I will adhere to the following standards of conduct:

- To execute the statutes of the State in which I am empowered, as promised when I took the oath of office
- To perform all tasks and responsibilities to the best of my ability
- To complete and submit all documentation accurately, on time and to the proper authorities
- To be honest with my clients and to act in their best interests
- To charge a fee for my services that reflects my expertise, effort, time and involvement in the preparation and performance of my duties and that is in compliance with state statute, if applicable
- To always act in a manner that reflects favorably on myself, my office, and the Justice of the Peace Association.

### Attachment 2: MA Town Clerk Testaments

*Received by email on March 7, 2018*

*Following is a partial selection of the emails JPUs received on March 7, 2018 from Massachusetts Town Clerks about the state's One-Day Solemnizer rule. Testaments edited for brevity and clarity.*

I had a lady come in asking to receive a certified copy of her Marriage Certificate. I looked high and low for the license, only to find out that her friend who officiated the wedding said that that he took care of all the paperwork. **WRONG.** The bride thought she was married. **She was so embarrassed to find that her 200 attendees went to a false wedding.**

- Theresa T. Bunce, CMC/CMMC, Dennis Town Clerk, Notary Public, Justice of the Peace, Board of Registrar, Burial Agent, RAO, Chief Election Official

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One-Day Solemnizers don't complete the license correctly (despite being provided instructions) and often we have to return it to them to complete another correctly. **This prevents the couple from obtaining an official certificate proving their marriage and sometimes obtaining health insurance etc.**

- Danielle Sicard, Easton Town Clerk

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**The problem with over 90% of the certificates is that the solemnizers do not follow the detailed instructions** we provide on how to complete their portion properly. All of these errors mean we have to type out new certificates. Also, we have problems not mailing or bringing in the certificates on time.

- Claudette C. Dolinski, Blackstone Town Clerk

May 23, 2019

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The One-Day Solemnizers routinely don't fill out the paperwork correctly, and that causes headaches for the couple and the clerk to record the marriage. **One-day people are loose with the law – they put dates that are not true, they just sign it without any ceremony at all, I've heard people do it by phone or Skype!**

- Kathleen F Nagle, Wellesley Town Clerk

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**The One-Day Solemnizations are an administrative nightmare for Clerk's.** My thoughts are to have a licensed JP or Clergy only to perform ceremonies and if the couple want to have someone there to say a few words, that would work out fine but leave the legal paperwork to the professionals!

- Marianne Staples, Mansfield Town Clerk, Justice of the Peace

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One day Solemnizer is one of the worst ideas. My office estimates 4 in 5 marriage licenses are sent back to us incorrect. They involve the license being done over by my staff and re-signed by the ODS. **This makes for delay in issuing a marriage certificate and also is twice the work for my office.**

- Laura Caruso, Sutton Town Clerk

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Quite often **marriage licenses that are returned to us for recording by one-day solemnizers have at least one error, even though there are only seven lines.** Sometimes they are not returned and therefore the marriage is not recorded.

- Lori A. Kelley, CMC/CMMC, Oxford Town Clerk

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**We have had to retype many certificates** due to (wrong town) error. They are not sure what their designation is. Some think they're a JP. They keep the solemnization certificate and we have to chase the person or the bride/groom, which holds up recording the record.

- Mary Ann Silva, Wareham Town Clerk

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Many times the One-Day Solemizers just don't know what they are doing. **We have written out explanation sheet and they still get it wrong when they fill out the license.** Then we have to track them down to get a new one signed.

- Amy Warfield, Burlington Town Clerk

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**Someone framed the form as a gift to give to the couple** and I had to have them get it back from the couple. They have lost the license and come in like it is ok, "We had too much to drink do not know where it is." Fun! Fun! Fun!

- Jane M. Murphy, Beverly Registrar of Voters

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May 23, 2019

One Day Solemnizers do not seem to be able to read the large, bold, printed instructions on completing their portion of the license. This results in longer time to register a record with the state, and longer wait time for couple to receive their certified copy. Not to mention **more time for my office to do the work twice.**

- Ellen M. Glidden, Barre Town Clerk

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NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Noble Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by E-mail at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <http://www.courts.state.nh.us/supreme>.

THE SUPREME COURT OF NEW HAMPSHIRE

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Hillsborough-northern judicial district  
No. 2005-352

GAYLE B. D'ANTONI & a.

v.

COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN  
SERVICES

Argued: March 8, 2006  
Opinion Issued: June 14, 2006

Mark M. Rufo, of Nashua, by brief and orally, for the plaintiffs.

Kelly A. Ayotte, attorney general (Orville B. Fitch II, senior assistant attorney general, on the brief, and Michael K. Brown, senior assistant attorney general, orally), for the defendant.

BRODERICK, C.J. The plaintiffs, Gayle B. D'Antoni, Thomas E. D'Antoni, Nicholas Cenatiempo and Mary Cenatiempo, appeal the decision of the Superior Court (Abramson, J.) granting summary judgment to the defendant, the Commissioner of the New Hampshire Department of Health and Human Services. We affirm.

I

The plaintiffs are two married couples who each paid \$45 to obtain marriage licenses. This cost is established by RSA 457:29 (2004), which states:

The fee for the marriage license shall be \$45 to be paid by the parties entering into the marriage. The clerk shall forward \$38 from each fee to the department of health and human services for the purposes of RSA 173-B:15. The clerk shall retain the remaining \$7 as the fee for making the records of notice, issuing the certificate of marriage, and forwarding the \$38 portion of the marriage license fee.

The \$38 portion is allocated to a special fund for domestic violence programs (DOVE Fund). The sole purpose of the fund is to provide revenues for the domestic violence program established in RSA 173-B:16 (2002), and DOVE Fund monies are not available for any other purpose. RSA 173-B:15 (2002). The State treasurer is required to deposit all money generated from the \$38 portion into the fund. Id.

Although RSA 457:29 labels the entire \$45 a fee, the plaintiffs alleged that the \$38 portion is, in fact, a tax. As such, they claimed that it violated Part I, Article 12 and Part II, Article 5 of the State Constitution. The commissioner disagreed, arguing that the \$38 portion of the \$45 payment was a fee, and therefore was not within the purview of those constitutional provisions.

The plaintiffs moved for summary judgment and attached as exhibits a certificate of intention of marriage and a pamphlet describing the requirements for receiving a marriage license, one of which is the \$45 payment. The commissioner filed a cross-motion for summary judgment and attached affidavits by William R. Bolton, Jr., and Michelle Rosenthal. Bolton is the registrar of vital records and director of the division of vital records administration, and Rosenthal is the domestic violence intervention coordinator at the department of health and human services.

Bolton's affidavit explained that his division manages approximately 40,000 vital records each year, including almost 10,000 marriages and 5,000 divorces. His affidavit further explained that the cost of the tracking software for marriage and divorce records is approximately \$105,000 per year, with marriage records alone approaching \$70,000. Taking into account the additional funds expended on application support, staffing, helpdesk, equipment replacement, maintenance and preservation of records, Bolton estimated that the combined cost of the marriage license program, including record creation and retention, is approximately \$40.44 per marriage.

Rosenthal's affidavit described the incidence of domestic violence among married couples. Based upon her four years of experience and training in the area of domestic violence, Rosenthal related that she had "personal knowledge regarding the relationship of domestic violence to marriage." Her affidavit



explained that ~~historically, husbands have had~~ social and legal authority over ~~their wives.~~ “While the legal status of wives has changed, remnants of these ~~historical relationships,~~ and the sense of entitlement and ownership they ~~fostered,~~ exist in our society today.” She contended that many husbands believe that they are entitled to take liberties with their wives, including acts of violence, that they would not take with other persons. She stated that the “relationship between domestic violence and marriage extends to all aspects of marriage including the process of applying for and obtaining a license to be married.”

Rosenthal explained that nearly one-third of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives, and that 30% of female murder victims in the United States are slain by their husbands or boyfriends. Finally, Rosenthal’s affidavit stated that one-half of all women will experience some form of violence from their partners during marriage, and that more than one-third are battered repeatedly every year. For each of these statistics, she provided a citation to a survey, an FBI report, or a scholarly journal.

The plaintiffs filed an objection to the commissioner’s motion for summary judgment, and also objected to Bolton’s affidavit on the grounds that it presented “no information relevant to the issue before the court.” They further argued that the commissioner seemed “to imply that the Court should rewrite statutory law on marriage license fees so as to reimburse the State for costs of keeping mandated vital statistics.” They did not, however, dispute the dollar amounts contained in the Bolton affidavit, nor did they offer any contrary figures.

The plaintiffs also objected to Rosenthal’s affidavit on the grounds that it presented “no information relevant to the issue before the court,” and that it was “not based upon personal knowledge or admissible facts” to which Rosenthal would be competent to testify. The plaintiffs argued that she was not an expert in history, psychology, or sociology, but nonetheless gave historical, psychological, and sociological opinions. While they did attach an article by two domestic violence experts explaining that domestic violence rates are lower among married couples than among couples who cohabit, they did not present any evidence or arguments attacking the study, report, and article upon which Rosenthal relied.

In granting the commissioner’s motion for summary judgment and denying the plaintiffs’ cross-motion, the trial court, relying upon American Automobile Association v. State of New Hampshire, 136 N.H. 579 (1992), determined that the funds acquired through issuing marriage licenses were fees and not taxes, and that because they are dollars, the \$38 charge was fungible and could be directed to the DOVE Fund. The trial court also ruled

that, as fees, the funds were reasonable because they related to the costs incurred by the State in issuing marriage licenses.

Finally, the plaintiffs apparently made claims relating to equal protection and the fundamental right to marry, which the trial court denied. This appeal followed.

## II

The plaintiffs first argue that the trial court erred in granting the commissioner's motion for summary judgment. Both parties moved for summary judgment and neither contends that there are any genuine issues of material fact. As such, we review the trial court's application of law to the facts *de novo*. See Hughes v. N.H. Div. of Aeronautics, 152 N.H. 30, 35 (2005). The opponent of a motion for summary judgment has the burden of contradicting facts in the proponent's affidavits or risking them being deemed admitted for purposes of the motion. Carbur's Inc. v. A & S Office Concepts, Inc., 122 N.H. 421, 423 (1982). Our review of the \$38 charge is confined to our general tax-versus-fee analysis.

The State Constitution grants the legislature the power "to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the . . . state." N.H. CONST. pt. II, art. 5. In applying this provision, the threshold inquiry is whether the charges in question are fees or taxes. A "tax" is an enforced contribution to raise revenue and not to reimburse the State for special services. American Automobile Assoc. v. State, 136 N.H. 579, 584 (1992). Taxes must be levied proportionately upon all taxpayers. Starr v. Governor, 148 N.H. 72, 74 (2002).

To be considered a "fee," the amount paid to acquire a business license, for example, must bear a relationship to and approximate the expense of issuing the license and of inspecting and regulating the business licensed. Laconia v. Gordon, 107 N.H. 209, 211 (1966). We have applied this same analysis to other kinds of charges, such as motor vehicle certificates of title fees. See American Automobile, 136 N.H. at 581-83. We consider principally the necessary expenses of issuing a license, certificate, or other document, and any costs associated with related inspection, regulation or supervision as may be required. *Id.* at 585; Gordon, 107 N.H. at 211. The amount of a "fee" will be sustained as long as it is not grossly disproportionate to the regulatory expenses — that is, it may cover incidental expenses incurred in consequence of the activity regulated, provided that the resulting "fee" does not become unreasonable. American Automobile, 136 N.H. at 585.

The plaintiffs argue that the \$38 charge is not related to the costs of issuing a marriage license or to the regulation of marriages. While we

recognize that marriage licenses, as the plaintiffs contend, are “neither subject to periodic renewal nor [do they subject] the licensee to any State regulatory authority,” we cannot say that the trial court erred in ruling that the funds are related to the costs of issuing the license. The Bolton affidavit indicates that the cost to the State of issuing and record-keeping for each marriage license is approximately \$40.44.

The plaintiffs contend that the State must assert that it would save money by ceasing to issue the marriage license. We have never required such a determination, and decline to do so now. To the contrary, we have required only a showing by “definite information” of a relationship between the amount of money generated by a licensing statute, and the costs associated with licensing and regulating the activity in question. American Automobile, 136 N.H. at 587. The trial court ruled that “any money generated by RSA 457:29 for use in the [DOVE Fund] is less than the amount of money that the State spends in connection with issuing the license.” We agree. In American Automobile, we examined the amount and type of costs expended on the State’s automobile theft prevention program. Id. at 587. The Bolton affidavit represents precisely the kind of “definite information” that we relied upon in that case.

The plaintiffs also argue that “the Bolton affidavit does not truly set out costs to the State from the issuance of marriage licenses.” The trial court did not make factual findings with regard to the costs outlined in the affidavit, recognizing “that genuine issues of material fact must be resolved at trial.” However, the trial court further stated, “With respect to the State’s estimates of the costs associated with issuing marriage licenses, the petitioners have offered no counteraffidavits, nor even argued that the State’s figures are incorrect.” By doing so, the plaintiffs risked the Bolton affidavit being deemed admitted for purposes of the motion, and we thus affirm the trial court’s reliance upon it. See Carbur’s Inc., 122 N.H. at 423.

With the Bolton affidavit uncontested, the trial court determined that the \$38 charge was not grossly disproportionate to the costs involved. In American Automobile, we held that the expenditures on anti-theft programs were “substantially greater than the . . . fees collected” by the State. American Automobile, 136 N.H. at 587. As the trial court here properly assumed that the facts in the Bolton affidavit were true, the trial court did not err in concluding that the \$38 charge is less than the costs to the State, and, accordingly, that it is not grossly disproportionate to the costs involved in issuing the plaintiffs’ marriage licenses.

The plaintiffs next argue that the legislature improperly directed the charges to the DOVE Fund. We disagree. In American Automobile, we recognized that “dollars are fungible, and we can assume, for the purpose of

evaluating the reasonableness of the certificate of title fees, that local governments allocated all of their revenue-sharing funds to the police departments.” Id. As the charges collected in this case are also dollars, the trial court did not err in ruling that they are fungible and that the legislature may require that those moneys be allocated directly to the DOVE Fund.

The plaintiffs contend that “RSA 457:29 explicitly prohibits the State from using its portion of the marriage license fee as fungible dollars, as the fee must be forwarded in toto to the [DOVE Fund].” The plaintiffs misunderstand the term “fungible.” That dollars are fungible does not mean that we require that they must in fact be mixed with the general fund, and thus be expended for multiple other programs. Rather it means, that they are capable of being used for other programs, one of which is the DOVE Fund. That the legislature has mandated that the moneys be paid directly to the DOVE Fund does not make them any less fungible than if it had required that they first be placed into the general fund.

Lastly, the plaintiffs contend that the trial court erred in granting the commissioner’s motion for summary judgment because the charges “imposed by RSA 457:29 [are] not related to the costs of issuing a marriage license.” They argue that the abuse the DOVE Fund seeks to curtail occurs between all family or household members, and not simply married couples. They rely on RSA 173-B:1, X (2002), which defines “family or household member” as:

Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the same residence . . . [as well as parents] and other persons related by consanguinity or affinity other than minor children who reside with the defendant.

The commissioner contends that the \$38 charge is related to issuing marriage licenses because, as explained in the Rosenthal affidavit, abuse levels are high among married couples. The plaintiffs respond by stating that domestic abuse extends beyond the realm of marriage, relying on the article by the domestic violence experts submitted in opposition to the Rosenthal affidavit. In essence, they argue that the charge is both over- and underinclusive; namely, it is paid by some individuals who may never take advantage of the DOVE Fund, while at the same time not paid by many people who do benefit from its services.

It is unclear whether the plaintiffs argue that this over- and underinclusiveness makes the \$38 charge: (1) an unconstitutional tax because it “is an enforced contribution to raise revenue and not to reimburse the state for special services,” American Automobile, 136 N.H. at 584 (quotation omitted), which is not applied proportionately to all taxpayers, Starr, 148 N.H.

at 74; or (2) an unreasonable fee because the record-keeping costs described by the Bolton affidavit constitute more than “incidental expenses incurred in consequence of the activity regulated,” American Automobile, 136 N.H. at 585 (quotation omitted). Given the following discussion, however, we need not determine whether they would prevail on either argument.

Illinois appears to be the only other jurisdiction to have addressed similar issues. In Boynton v. Kusper, 494 N.E.2d 135 (Ill. 1986), the Illinois Supreme Court examined the constitutionality of a \$10 charge to obtain a marriage license in that State. The Illinois legislature had increased the cost of a marriage license from \$15 to \$25, with the additional \$10 to be directed to the Illinois Domestic Violence Shelter and Service Fund. Boynton, 494 N.E.2d at 136.

The inquiry under the Illinois Constitution to determine whether a charge is a fee or a tax is similar to that under the New Hampshire Constitution. In Illinois, “a charge having no relation to the services rendered, assessed to provide general revenue rather than compensation, is a tax.” Id. at 138 (quotation omitted). The Boynton court stated:

The portion of the marriage license fee in question here has no relation to the county clerk’s service of issuing, sealing, filing, or recording the marriage license. Its sole purpose is to raise revenue which is deposited in the Domestic Violence Shelter and Service Fund so that the Department of Public Aid can provide domestic-violence shelters and service programs. Thus, . . . this portion of the fee is a tax.

Id. (citations omitted).

Having determined that the \$10 portion was a tax, the court then stated that “the tax has been placed only upon those single people who apply for marriage licenses. Other classes of people equally eligible to receive the benefits of the Domestic Violence Shelters Act are not assessed such a ‘fee.’” Id. at 139. The court was concerned that the Illinois Legislature, under the guise of a fee, might place the burden to fund many general-revenue programs upon narrow classes of individuals rather than spreading them among the general public.

Using the same cause-and-effect test that the defendants would have us apply to the relation between marriage and domestic violence, other worthy social problems can be found that are just as closely and reasonably related to marriage as is domestic violence, if not more so. Since all divorces involve people who have been married, why should not a marriage counseling program be

financed by another tax on marriage licenses? Since most marriages produce children, why should we not defray certain educational costs by the imposition of yet another add-on tax to marriage licenses? Why should not such a tax be imposed for the maintenance of institutions for delinquent or neglected children, and why should not yet another tax be imposed to defray juvenile-probation costs? We conclude in this case that the imposition of a tax on the issuance of a marriage license does not bear a reasonable relation to the public interest sought to be protected by the Act in question and the means adopted, that is, the imposition of the tax on marriage licenses, is not a reasonable means of accomplishing the desired objective.

Id. at 140. For these reasons, the Boynton court held that the \$10 portion of the marriage license charge was an arbitrary and irrational use of the State's power, and thus an unconstitutional tax. Id. at 138, 139-40.

While we share some of the concerns of the Illinois Supreme Court, this case is distinguishable from Boynton. In that case, the \$10 portion was in addition to the fees necessary to pay for the State's expenses, and thus the court was required to examine whether the charge was sufficiently related to issuing the marriage licenses. Id. at 136. Here, however, the uncontested Bolton affidavit makes clear that the \$38 charge is less than the State's costs. Accordingly, we need not determine if, as the plaintiffs allege, the \$38 charge constitutes reimbursement for special services, or whether the costs incurred by funding the DOVE Fund are more than incidental expenses related to issuing the licenses.

While we recognize that directing the \$38 charge to the DOVE Fund here is like the \$10 charge in Boynton in that it is both over- and underinclusive, we disagree with the plaintiffs and the Illinois Supreme Court that this aspect necessarily makes it unreasonable, irrational, or arbitrary. Such an inquiry is generally limited to the least-restrictive-means analyses of higher levels of constitutional review. See, e.g., City of Dover v. Imperial Cas. & Indemn. Co., 133 N.H. 109, 126 (1990) (Souter, J., dissenting) (discussing over- and underinclusive nature of statute in applying intermediate scrutiny); Chen v. Ashcroft, 381 F.3d 221, 227 (3d Cir. 2004) ("Of course, this use of marital status as a proxy is undoubtedly both over- and under-inclusive to some extent, but neither over- nor under-inclusiveness is alone sufficient to render the use of a metric like marital status irrational."); Lofton v. Secretary of the Dep't of Children & Family, 358 F.3d 804, 822-23 (11th Cir. 2004) ("The Supreme Court repeatedly has instructed that neither the fact that a classification may be overinclusive or underinclusive nor the fact that a generalization underlying a classification is subject to exceptions renders the classification irrational."), cert. denied, 543 U.S. 1081 (2005). We recognize

that there may be statutes that are so extremely over- or underinclusive as to make them unreasonable, irrational, or arbitrary. However, because we do not reach the issues of whether the DOVE Fund constitutes special services or whether the \$38 charge constitutes more than incidental expenses to the State, we need not decide whether this is such a case.

Accordingly, we hold that the trial court properly ruled that the \$38 charge was a fee, not a tax, because the uncontested evidence demonstrated that the charges bore a reasonable relationship to, and approximated the expenses of, issuing the plaintiffs' marriage licenses. See Gordon, 107 N.H. at 211. We thus affirm the trial court's granting of the commissioner's motion for summary judgment.

### III

We next address whether the trial court erred in denying the plaintiffs' motion for summary judgment. It is here that the plaintiffs argue that RSA 457:29 "violates equal protection rights under" Part I, Article 12 and Part II, Article 5 of the State Constitution, as well as violates their fundamental right to marriage. We can find no indication in the record that these arguments were pled. Nor have we been provided a transcript to review whether they were raised during a hearing before the trial court. However, because both arguments were noted by the trial court in its order, we will assume that they were preserved.

We agree with the trial court that the precise nature of the plaintiffs' arguments relating to equal protection and marriage as a fundamental right are not clear. As the trial court stated, "It appears that [the plaintiffs] make their equal protection arguments with respect to taxpayers, taxes, and uniform taxation. Because the Court already has determined, as a threshold matter, that the license charge is a fee — not a tax — the Court does not reach these constitutional arguments." For these same reasons, we do not reach the plaintiffs' claims relating to marriage as a fundamental right and equal protection. Nor do we address the remainder of the plaintiffs' arguments on appeal — namely, whether RSA 457:29 is ambiguous, whether it constitutes double taxation, whether they are entitled to seek a refund under a common law refund theory, and whether they are entitled to equitable relief — all of which were argued on the premise that the \$38 charge was a tax, not a fee.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

## Horgan, Jennifer

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**From:** Steven M. Dembow <steven.m.dembow@comcast.net>  
**Sent:** Wednesday, April 24, 2019 9:05 PM  
**To:** Horgan, Jennifer  
**Subject:** Summation of testimony re: HB-295 - One-day Marriage Officiant

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good evening Jennifer:

Thank you, in advance, for passing along to members of the Senate Judiciary Committee the following distillation of my testimony regarding this bill.

Kind regards,

Steven M. Dembow, J.P.

To the Honorable members of the Senate Judiciary Committee:

As a practicing Justice of the Peace in New Hampshire since 2002, I have presided on close to 1,000 wedding ceremonies since I received my first commission as a J.P. These ceremonies have taken place in every state in New England, as well as in New York, Maryland and California. I have *faithfully* and *accurately* complied with all laws and regulations set forth by each respective state regarding my status as both a NH Justice of the Peace and an Ordained Pastor, and have interacted with hundreds of Town and City Clerks in the timely filing of properly filled out paperwork to support the execution of my duties.

In my opinion, and after speaking with the Town Clerk of the Town of Merrimack, NH, Diane Trippett, who fully supports my position, it would be unwise for the State of New Hampshire to allow for so-called "One-Day" officiants to perform marriages; the main reason for this is to ensure that *application of proper knowledge of all facets of the duties of a Justice of the Peace* and the *follow-through of properly-executed paperwork* results in *timely, accurately and legally-executed documentation* of such an aforesaid marriage, and that such paperwork is presented *promptly* to the city or town clerk's office from which application for same was made by the intended couple.

Professional Justices of the Peace are sworn to abide by all laws concerning their duties, which is something a "One-Day" officiant would have no knowledge of and therefore could allow for a greater possibility of issues regarding improper, inaccurate, late or even complete lack of follow through in providing the required documentation necessary for a City or Town Clerk to *timely and properly* record such a vital document. This could result in *costly and potentially serious consequences* to married persons if problems arise in the Clerk's inability to process a faulty – or even absent - marriage license. Problems of this nature experienced by numerous Clerks in Massachusetts have caused needless backups and confusion related to their state's provision to allow such "One-Day" officiants, and the State of Connecticut recently decided to block such proposed legislation in their state for the same reason.



In sum, I would urge those on the Committee to listen to the experiences of others and consider the consequences of allowing non-commissioned amateur and unsworn "officiants" to be able to solemnize marriages in the State of New Hampshire. Should the proposed bill be amended to further require that one-day officiants be allowed to "solemnize" marriage ceremonies *under the supervision of a commissioned justice of the peace* who would then handle the proper paperwork processing, I believe this solution would satisfy all parties and prevent needless, costly and potentially damaging legal consequences.

Respectfully,

Steven M. Dembow, J.P.

15 Joppa Rd.  
Merrimack, NH 03054-3125

Home: (603) 429-0902

Cell: (603) 345-6576



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**RE: Research request - Vermont Officiant Law**

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**Padden, Myla** <Myla.Padden@leg.state.nh.us>  
To: "Cushing, Renny" <reprennycushing@gmail.com>

Thu, Jun 11, 2015 at 4:48 PM

Hi Renny,

I have attached the Vermont law that allows an individual to register with the Vermont Secretary of State's office as a temporary officiant for marriages, upon payment of a \$100 fee. The fee is not earmarked for a particular purpose; revenues collected are deposited into the Secretary of State's special account up to a determined budgeted amount. Any revenues collected in excess of that amount are deposited into the state's general fund. I have attached a copy of the registration form.

Since its enactment in 2008, the Secretary of State has received the following number of Temporary Officiant applications:

- 2008: 130
- 2009: 402
- 2010: 597
- 2011: 699
- 2012: 831
- 2013: 1039
- 2014: 1057
- 2015: 424 (to date)

I still need to determine if other states have a law similar to the Vermont statute. As soon as I have that information, I will forward it to you.

In the meantime, I hope this is helpful.

Myla

Myla Padden, Research Director



# Voting Sheets

# Senate Judiciary Committee

## EXECUTIVE SESSION

Bill # HB295

Hearing date: \_\_\_\_\_

Executive session date: \_\_\_\_\_

Motion of: 1923

VOTE: 3-2

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input checked="" type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input checked="" type="checkbox"/>	Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

Motion of: OTPA

VOTE: 3-2

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input checked="" type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input checked="" type="checkbox"/>	Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Hennessey, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Chandley, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Levesque	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

\*Amendments: \_\_\_\_\_

Notes: \_\_\_\_\_

# Committee Report



**JUDICIARY**

**HB 295-FN-A**, establishing a special marriage officiant license.

Ought to Pass with Amendment, Vote 3-2.

Senator Melanie Levesque for the committee.



**Docket of HB295**

**Bill Title:** (New Title) establishing a special marriage officiant license and relative to the assignment of temporary justices to the supreme court.

**Official Docket of HB295.:**

<b>Date</b>	<b>Body</b>	<b>Description</b>
12/31/2018	H	<b>Introduced</b> 01/02/2019 and referred to Judiciary <b>HJ 2 P. 44</b>
1/3/2019	H	Public Hearing: 01/16/2019 10:00 am LOB208
1/9/2019	H	Executive Session: 01/22/2019 01:00 pm LOB 208
1/24/2019	H	Majority Committee Report: Ought to Pass for 02/14/2019 ( <b>Vote 11-8; RC) HC 11 P. 16</b>
1/24/2019	H	Minority Committee Report: Inexpedient to Legislate
2/14/2019	H	<b>Ought to Pass:</b> MA DV 206-138 02/14/2019 <b>HJ 5 P. 60</b>
2/14/2019	H	Referred to Ways and Means 02/14/2019 <b>HJ 5 P. 60</b>
2/27/2019	H	Public Hearing: 03/06/2019 10:00 am LOB 202
3/13/2019	H	Full Committee Work Session: 03/18/2019 01:00 pm LOB 202
3/19/2019	H	Full Committee Work Session: 03/26/2019 10:00 am LOB 202
3/19/2019	H	Executive Session: 03/27/2019 10:00 am LOB 202
3/28/2019	H	Majority Committee Report: Ought to Pass for 04/04/2019 (Vote 12-8; RC) <b>HC 18 P. 6</b>
3/28/2019	H	Minority Committee Report: Ought to Pass with Amendment <b>#2019-1205h</b>
4/4/2019	H	Amendment <b>#2019-1205h:</b> AF <b>RC 154-215</b> 04/04/2019 <b>HJ 12 P. 32</b>
4/4/2019	H	<b>Ought to Pass:</b> MA <b>RC 214-155</b> 04/04/2019 <b>HJ 12 P. 32</b>
4/12/2019	S	Introduced 04/11/2019 and Referred to Judiciary; <b>SJ 13</b>
4/18/2019	S	<b>Hearing:</b> 04/23/2019, Room 100, SH, 09:15 am; <b>SC 19</b>
5/14/2019	S	Committee Report: Ought to Pass with Amendment <b>#2019-1966s</b> , 05/23/2019; <b>SC 23</b>
5/23/2019	S	Special Order to the next session, Without Objection, MA; 05/23/2019; <b>SJ 17</b>
5/23/2019	S	Committee Report: Ought to Pass with Amendment <b>#2019-1966s</b> , 05/30/2019; <b>SC 24</b>
5/30/2019	S	Committee Amendment <b>#2019-1966s</b> , <b>RC 14Y-10N</b> , AA; 05/30/2019; <b>SJ 18</b>
5/30/2019	S	<b>Ought to Pass with Amendment</b> 2019-1966s, <b>RC 14Y-10N</b> , MA; OT3rdg; 05/30/2019; <b>SJ 18</b>
6/10/2019	H	House Non-Concurs with Senate Amendment 1966s and Requests CofC (Reps. M. Smith, Almy): MA VV 06/06/2019 <b>HJ 18 P. 41</b>
6/10/2019	H	Speaker Appoints: Reps. Woodbury, Burroughs, Gordon, Berch 06/06/2019 <b>HJ 18 P. 41</b>
6/11/2019	S	Sen. Hennessey Accedes to House Request for Committee of Conference, MA, VV; (In recess 06/06/2019); <b>SJ 20</b>
6/11/2019	S	President Appoints: Senators Hennessey, Chandley, French; (In Recess 06/06/2019); <b>SJ 20</b>
6/12/2019	H	Conference Committee Meeting: 06/17/2019 02:00 pm LOB 208

6/14/2019	S	Conferee Change; Senator Levesque Replaces Senator Chandley; <b>SJ 21</b>
6/20/2019	S	Conferee Change; Senator Soucy Replaces Senator Levesque; <b>SJ 21</b>
6/20/2019	S	Conference Committee Report; Not Signed Off; <b>SJ 21</b>

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NH House

NH Senate

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# Other Referrals

## Senate Inventory Checklist for Archives

Bill Number: HB 295-FN-A

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee  
 All Calendar Notices  
 Hearing Sign-up sheet(s)  
 Prepared testimony, presentations, & other submissions handed in at the public hearing  
 Hearing Report  
 Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1923       - amendment # 1966  
\_\_\_\_\_ - amendment # \_\_\_\_\_      \_\_\_\_\_ - amendment # \_\_\_\_\_

- Executive Session Sheet  
 Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_\_\_ - amendment # \_\_\_\_\_      \_\_\_\_\_ - amendment # \_\_\_\_\_  
\_\_\_\_\_ - amendment # \_\_\_\_\_      \_\_\_\_\_ - amendment # \_\_\_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

- \_\_\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):  
\_\_\_\_\_ Enrolled Bill Amendment(s)  
\_\_\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

as amended by the senate      \_\_\_\_\_ as amended by the house  
 final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

\_\_\_\_\_  
Committee Aide

\_\_\_\_\_  
Date

Senate Clerk's Office JM