

LEGISLATIVE COMMITTEE MINUTES

# **HB1448**

# Bill as Introduced

HB 1448 - AS AMENDED BY THE HOUSE

15Mar2022... 0394h

2022 SESSION

22-2023  
04/05

HOUSE BILL        **1448**

AN ACT            relative to the pretermitted heir statute.

SPONSORS:        Rep. Lynn, Rock. 7; Rep. Umberger, Carr. 2

COMMITTEE:      Judiciary

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ANALYSIS

This bill revises the statute governing pretermitted heirs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the pretermitted heir statute.

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

1 Wills; Child Not Named. RSA 551:10 is repealed and reenacted to read as follows:

2 551:10 Child Not Named.

3 I. In this section:

4 (a) "Estate" means all property of the testator subject to probate administration and  
5 disposition under the testator's will.

6 (b) "Devise" means any testamentary disposition of real or personal property made  
7 under the testator's will.

8 II. Except as provided in paragraph III, if a testator fails to provide in the testator's will for  
9 any of the testator's children born or adopted after the execution of the will, the omitted after-born or  
10 after-adopted child shall receive a share in the estate as follows:

11 (a) If the testator had no child living when the testator executed the will, an omitted  
12 after-born or after-adopted child receives a share in the estate equal in value to that which the child  
13 would have received had the testator died intestate, unless the will devised all or substantially all of  
14 the estate to the other parent of the omitted child and that other parent survives the testator and is  
15 entitled to take under the will. The share to which the omitted child shall be entitled under this  
16 subparagraph shall be satisfied first from the residue of the estate and if insufficient, from the other  
17 assets of the estate pro rata.

18 (b) If the testator had one or more children living when the testator executed the will,  
19 and the will devised property or an interest in property to one or more of the then-living children, an  
20 omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

21 (1) The portion of the testator's estate in which the omitted after-born or after-  
22 adopted child is entitled to share is limited to devises made to the testator's then-living children  
23 under the will.

24 (2) The omitted after-born or after-adopted child is entitled to receive the share of  
25 the testator's estate, as limited in subparagraph (b)(1), that the child would have received had the  
26 testator included all omitted after-born and after-adopted children with the children to whom  
27 devises were made under the will and had given an equal share of the estate to each child.

28 (3) To the extent feasible, the interest granted an omitted after-born or after-adopted  
29 child under this section must be of the same character, whether equitable or legal, present or future,  
30 as that devised to the testator's then-living children under the will.

**HB 1448 - AS AMENDED BY THE HOUSE**

**- Page 2 -**

1           (4) In satisfying a share provided by this paragraph, devises to the testator's  
2 children who were living when the will was executed abate ratably. In abating the devises of the  
3 then-living children, the character of the testamentary plan adopted by the testator shall be  
4 preserved to the maximum extent possible.

5           III. Neither subparagraph I(a) or (b) shall apply if it appears from the will that the omission  
6 was intentional.

7           IV. If at the time of execution of the will the testator fails to provide in the testator's will for  
8 a living child solely because the testator believes the child to be dead, the child is entitled to share in  
9 the estate as if the child were an omitted after-born or after-adopted child.

10          2 Repeal. RSA 551:11, relative to the share of an unnamed child, is repealed.

11          3 Applicability. This act shall apply to all wills executed before or after the effective date of this  
12 act, except that this act shall not apply to those wills executed by a testator who died prior to the  
13 effective date of this act.

14          4 Effective Date. This act shall take effect January 1, 2023.

HB 1448 - AS AMENDED BY THE SENATE

15Mar2022... 0394h  
04/21/2022 1583s

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CHAPTER 261  
HB 1448 - FINAL VERSION

15Mar2022... 0394h  
04/21/2022 1583s

2022 SESSION

22-2023  
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CHAPTER 261  
HB 1448 - FINAL VERSION

15Mar2022... 0394h  
04/21/2022 1583s

22-2023  
04/05

STATE OF NEW HAMPSHIRE

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1 261:1 Wills; Child Not Named. RSA 551:10 is repealed and reenacted to read as follows:

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**CHAPTER 261**  
**HB 1448 - FINAL VERSION**  
**- Page 2 -**

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13          261:2 Repeal. RSA 551:11, relative to the share of an unnamed child, is repealed.

14          261:3 Applicability. This act shall apply to all wills executed before or after the effective date of  
15 this act, except that this act shall not apply to those wills executed by a testator who died prior to  
16 the effective date of this act.

        261:4 Effective Date. This act shall take effect January 1, 2023.

Approved: June 24, 2022  
Effective Date: January 01, 2023

# Amendments

Sen. Carson, Dist 14  
April 15, 2022  
2022-1583s  
04/10

Floor Amendment to HB 1448

1 Amend RSA 551:10, III as inserted by section 1 of the bill by replacing it with the following:

2

3 III. Neither subparagraph II(a) or (b) shall apply if it appears from the will that the

4 omission was intentional.

# Committee Minutes

**AMENDED  
SENATE CALENDAR NOTICE  
Judiciary**

Sen Sharon Carson, Chair  
Sen Bill Gannon, Vice Chair  
Sen Harold French, Member  
Sen Rebecca Whitley, Member  
Sen Jay Kahn, Member

Date: April 7, 2022

**HEARINGS**

Thursday	04/14/2022
(Day)	(Date)
Judiciary	State House 100
(Name of Committee)	(Place)
	10:30 a.m.
	(Time)

Note: The committee will meet at 10:30 a.m. or 15 minutes following the end of Session.

10:30 a.m.	<b>EXECUTIVE SESSION ON PENDING LEGISLATION</b>	
1:00 p.m.	<b>HB 1036</b>	relative to nonpublic meetings concerning public employees.
1:15 p.m.	<b>HB 1073</b>	modifying attorney exemptions under RSA 91-A.
1:30 p.m.	<b>HB 1343</b>	allowing limited legal services to be provided by certain paraprofessionals.
1:45 p.m.	<b>HB 1448</b>	relative to the pretermitted heir statute.
2:00 p.m.	<b>HB 1579</b>	relative to landowner liability on land authorized for outdoor recreational activities.
2:15 p.m.	<b>HB 238</b>	prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

<b>HB 1036</b>	Rep. Wuelper	Rep. M. Smith	Rep. P. Schmidt
	Rep. Spillane	Rep. Ford	Rep. Testerman
<b>HB 1073</b>	Rep. Wuelper	Rep. Potucek	Rep. Stapleton
<b>HB 1343</b>	Rep. Gordon	Rep. Rice	Rep. M. Smith
	Sen. French	Sen. Whitley	Rep. Wuelper
<b>HB 1448</b>	Rep. Lynn	Rep. Umberger	
<b>HB 1579</b>	Rep. Gould	Rep. Stavis	Rep. Cordelli
			Rep. S. Pearson

Rep. Creighton  
Sen. Prentiss

**HB 238**

Rep. Query  
Rep. Mullen  
Rep. Amanda Bouldin

Rep. Notter  
Sen. Kahn

Rep. Levesque  
Rep. Tanner  
Sen. Perkins Kwoka

Rep. Gagne

Rep. Weston  
Rep. Alexander Jr.

Rep. Abel

Rep. Bunker  
Rep. Toll

Jennifer Horgan 271-7875

Sharon M Carson  
Chairman



# Senate Judiciary Committee

*Jennifer Horgan 271-7875*

**HB 1448**, relative to the pretermitted heir statute.

**Hearing Date:** April 14, 2022

**Time Opened:** 2:46 p.m.

**Time Closed:** 3:03 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, French, Whitley and Kahn

**Members of the Committee Absent :** None

**Bill Analysis:** This bill revises the statute governing pretermitted heirs.

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**Sponsors:**

Rep. Lynn

Rep. Umberger

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**Who supports the bill:** Representative Lynn

**Who opposes the bill:** No one

**Summary of testimony presented in support:**

**Representative Lynn**

- This bill reflects input from a variety of probate law practitioners.
- Requests a technical amendment to address an error on page 2, line 5 which reads "III. Neither subparagraph I(a) or (b) shall apply"
- The line should read: "III. Neither subparagraph II(a) or (b) shall apply" because the bill originally did not have a definitions section in I.
- This bill is designed to change the current pretermitted heir statute which can operate harshly in a couple of ways.
- The current statute applies in two circumstances.
- One circumstance is when a person makes a will and then after making the will has another child; unless there are other circumstances it is likely that the testator probably just forgot to change their will around.
- The other circumstance is a situation where the testator has not mentioned a child that was already born when the will was written.
- The current statute creates a presumption you forgot about the child.
- The current statute requires the testator has to come pretty close to saying that if the testator doesn't want to give anything to Child #3 it has to be pretty close to saying Child #3 should not get anything.

- There are a series of Supreme Court decisions construing the statute in this way.
- Another harsh area of the statute is that it provides that when it applies, the pretermitted heir takes an attested share under the will.
- This means if there are three children and the will only mentions Child #1 and Child #2 with them only getting a certain percentage of the estate, if Child #3 is determined to be a pretermitted heir, then Child #3 can get an inordinately large share of the estate because that child would take under the intestate succession, as if there were no will.
- This bill changes the method of distribution to make it more in line with what the testator likely would have meant.
- This applies only in circumstances where a child born after or when a child was born before the will is made if it is shown the testator believed the child was dead.
- A testator's child could go to Europe and is never heard from again and the parent believes the child is dead.
- The proposed language creates circumstances that are designed to be much more likely to be what the testator likely intended.
- “(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.”
- In that circumstance when the testator does not make provisions for an omitted child but has left everything to the mother of the child, the presumption would be that the testator believed the mother would take care of the child when she dies; that is why that is carved out as an exemption.
- Senator French asked if this changes nothing if the child is mentioned and left nothing in the will.
  - Correct. Under this the testator could still say I am leaving nothing to Child #3.
- Senator Gannon stated that often wills say “any heir not mentioned is intentional”, which would leave that heir out.
  - Yes.
- Senator Gannon asked if it is current law that a child born after a will is made can receive a share of the estate.
  - Yes. The law will still cover that circumstance under this bill. Think it is at least somewhat, in light of the most recent Supreme Court case, an open question if you simply say “anyone not mentioned in this will is not to receive”. that may be enough, but it may not be. If a testator has three children and they don't want to leave anything to Child #3, they have to

come pretty close to saying they don't want to leave anything to Child #3. The Supreme Court decision ruled that will have to be pretty specific.

- Senator Gannon stated that this is going to be uncomfortable if people have to be called out specifically in wills.
  - This is designed to alleviate that situation of already existing children. If the children are already born after the will was made, then the pretermite heir statute would not apply to them. It is only children born after the will was made or if the testator thinks the child is dead.
- Senator Carson raised concerns about how this would be impacted by the increase in cases of people getting genetics testing and finding out information about who their parents actually are. She asked if under this bill, those children, who find out who they thought were their parents are not their biological parent, would be able to come in and say they want to inherit from their biological parent.
  - This bill applies to both a natural born child and an adopted child. The current statute does not address all the implications of those kinds of situations where someone "stepped out of a marriage". The question of whether that child's rights to inherit and from who would not be addressed by this bill and is not addressed in current law.
- Senator Carson asked about adoptees and their biological parents
  - This would not apply to them because in order for there to be an adoption, the parental rights have to be terminated.

**Summary of testimony presented in opposition:**

None

jeh  
Date Hearing Report completed: April 15, 2022

# Speakers



## **Senate Remote Testify**

Judiciary Committee Testify List for Bill HB1448 on 2022-04-14

Support: 0 Oppose: 0

# Voting Sheets

**Senate Judiciary Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # 1448

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

Executive Session date: \_\_\_\_\_

Motion of: OTP Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: CASE

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



# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Thursday, April 14, 2022

THE COMMITTEE ON Judiciary

to which was referred **HB 1448**

AN ACT relative to the pretermitted heir statute.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Sharon Carson  
For the Committee

This bill will clarify the statute regarding when children of a testator should receive a portion of the estate when they are not mentioned in the will. Children that were born after the will was written or that the testator believed were dead will, under this language, be entitled to a portion of the estate, requiring testators to be more explicit in their will drafting when looking to exclude a child from benefiting from the estate.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

**JUDICIARY**

**HB 1448**, relative to the pretermitted heir statute.

Ought to Pass, Vote 5-0.

Senator Sharon Carson for the committee.

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# HB1448

## Bill Details

**Title:** relative to the prepermitted heir statute.

**Sponsors:** *(Prime)* Lynn (R), Umberger (R)

LSR Number: **22-2023**

General Status: **SIGNED BY GOVERNOR**

Chapter Number: **261**

House:

**Committee:** Judiciary

**Due Out:** 3/10/2022

**Status:** CONCURRED

Senate:

**Committee:** Judiciary

**Floor Date:** 4/21/2022

**Status:** PASSED/ADOPTED WITH AMENDMENT

### Bill Docket

Body	Description
H	Introduced 01/05/2022 and referred to Judiciary
H	Public Hearing: 01/13/2022 02:15 pm LOB 206-208
H	Executive Session: 01/13/2022 02:15 pm LOB 206-208
H	Committee Report: Ought to Pass with Amendment # 2022-0394h ( <b><u>Vote 21-0; CC)</u></b> )
H	Amendment # 2022-0394h: AA VV 03/15/2022 <b><u>HJ 6</u></b>
H	Ought to Pass with Amendment 2022-0394h: MA VV 03/15/2022 <b><u>HJ 6</u></b>
S	Introduced 03/17/2022 and Referred to Judiciary; <b><u>SJ 6</u></b>
S	Hearing: 04/14/2022, Room 100, SH, 01:45 pm; <b><u>SC 15</u></b>
S	Committee Report: Ought to Pass, 04/21/2022; Vote 5-0; CC; <b><u>SC 16</u></b>
S	Sen. Carson Moved to Remove HB 1448 from the Consent Calendar: 04/21/2022; <b><u>SJ 9</u></b>
S	Sen. Carson Floor Amendment # 2022-1583s, AA, VV; 04/21/2022; <b><u>SJ 9</u></b>
S	Ought to Pass with Amendment 2022-1583s, MA, VV; OT3rdg; 04/21/2022; <b><u>SJ 9</u></b>
H	House Concurs with Senate Amendment (Rep. Gordon): MA VV 05/12/2022 <b><u>HJ 13</u></b>
S	Enrolled Adopted, VV, (In recess 05/26/2022); <b><u>SJ 13</u></b>
H	Enrolled (in recess of) 05/26/2022 <b><u>HJ 14</u></b>
H	Signed by Governor Sununu 06/24/2022; Chapter 261; eff. 01/01/23 <b><u>HJ 14</u></b>

# Other Referrals

**Senate Inventory Checklist for Archives**

Bill Number: HB1448

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

\_\_\_ - 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 # 1583      \_\_\_ - 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:

*Jennifer Hays*  
Committee Aide

8/12/22  
Date

Senate Clerk's Office ALC