

HB 1596-FN-LOCAL - AS INTRODUCED

2016 SESSION

16-2180

09/04

HOUSE BILL

***1596-FN-LOCAL***

AN ACT                    changing the marriage license requirement to a requirement that couples obtain a certificate of notice of intent to marry and a certificate of marriage.

SPONSORS:            Rep. Itse, Rock. 10; Rep. Hill, Merr. 3; Rep. Hoell, Merr. 23; Rep. Ingbreton, Graf. 15

COMMITTEE:        Judiciary

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ANALYSIS

This bill changing the marriage license requirement to a requirement that couples obtain a certificate of notice of intent to marry and a certificate of marriage.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struck through]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Sixteen*

AN ACT                    changing the marriage license requirement to a requirement that couples obtain a certificate of notice of intent to marry and a certificate of marriage.

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

1            1 Legislative Finding. The legislature finds that RSA 457 acknowledges the marriage of 2  
2 eligible individuals to be a right. Therefore, since it is improper for the government to license a  
3 right, the state of New Hampshire is compelled to return to the practice of certificate of notice of  
4 intent to marry and a certificate of marriage which existed until 1997 and which provides interested  
5 parties the opportunity to object to a proposed marriage.

6            2 Vital Records Administration; Marriage Registration Forms. Amend RSA 5-C:41 to read as  
7 follows:

8            5-C:41 Marriage Registration Forms.

9            I. There shall be 2 forms for the completion of a marriage registration. The [~~marriage~~  
10 ~~application worksheet~~] **certificate of notice of intent to marry**, which shall be the form that is  
11 used to record [~~marriage intentions~~] **that the intention to be married has been published in a**  
12 **newspaper of statewide circulation**, shall be completed by the prospective bride and groom and  
13 the clerk of the town or city and shall contain the information needed to complete the marriage  
14 [~~license~~] **certificate**. The marriage [~~license~~] **certificate**, which shall be the form that is used to  
15 record that the marriage ceremony has taken place and to record who solemnized the marriage,  
16 shall be completed by the bride, groom, the officiant, and the clerk of the town or city in accordance  
17 with this section and RSA 5-C:42. The marriage [~~license~~] **certificate** shall be the official copy of the  
18 certificate of marriage when the marriage is registered with the division.

19            II. The [~~marriage~~] **certificate of notice of intent to marry** application worksheet shall be  
20 completed by the prospective bride and groom in the office of the clerk of the town or city. The  
21 information supplied by the groom shall include his full name; his usual residence by street and  
22 number, city, town or location, county and state; his birthplace; his date of birth; his social security  
23 number; his father's full name; his father's birthplace; his mother's maiden name; and his mother's  
24 birthplace. The information supplied by the bride shall include her full name and maiden surname,  
25 if different; her usual residence by street and number, city, town or location, county and state; her  
26 birthplace; her date of birth; her social security number; her father's full name; her father's  
27 birthplace; her mother's maiden name; and, her mother's birthplace.

28            II-a.(a) Upon entering into marriage, either party may retain his or her surname prior to  
29 the marriage or change his or her surname to the surname of the other party or change the  
30 surname to a hyphenated combination of the full surnames of both parties. If a party requests a

1 surname change under this paragraph, that party may also change his or her middle name to his or  
2 her surname prior to the marriage. Each party shall indicate on the [~~marriage-application~~  
3 ~~worksheet~~] ***certificate of notice of intent to marry*** the party's name after marriage.

4 (b) Provided that the change is not made for a fraudulent criminal or wrongful purpose,  
5 the name of each party after marriage as indicated on the [~~marriage-application-worksheet~~]  
6 ***certificate of notice of intent to marry*** and [~~marriage-license~~] ***certificate*** shall become the sole  
7 legal name of each party after marriage. If a party indicates a name change other than as described  
8 in subparagraph (a), the party shall request approval of the court.

9 III. The clerk of the town or city shall complete the following statistical and legal  
10 information on the [~~marriage-application-worksheet~~] ***certificate of notice of intent to marry*** for  
11 both the bride and groom with information supplied by the bride and groom: the number which  
12 represents of the currently intended marriage; if previously married, whether a civil annulment  
13 occurred or the marriage ended by death or divorce; the date of civil annulment or that the last  
14 marriage ended; their race and ancestry; their level of education; any waivers presented by the  
15 groom or the bride, either for time or age pursuant to RSA 457:4 through RSA 457:9 or RSA 457:26  
16 and RSA 457:27; whether proof of age of the bride and groom was demonstrated using identification  
17 with photograph; if applicable, the divorce decree; and, if applicable, the death record of the former  
18 spouse.

19 IV. The bride and groom shall record the following on the [~~marriage-application-worksheet~~]  
20 ***certificate of notice of intent to marry*** after the clerk of the town or city completes information  
21 [~~on the application-worksheet~~] as described in paragraph III: the date and the city or town where  
22 the marriage is intended to take place, if known; the name and address of the officiant for the  
23 marriage ceremony, if known; the groom's mailing address and phone number; the bride's mailing  
24 address and phone number; the groom's signature and date signed; the bride's signature and date  
25 signed; and certification that the information provided is correct to the best of his or her knowledge  
26 and belief and that he or she is free to marry under the laws of New Hampshire.

27 V. Once all of the information on the [~~marriage-application-worksheet~~] ***certificate of***  
28 ***notice of intent to marry*** has been obtained, the clerk of the town or city shall transfer the  
29 information as listed in paragraphs II and III from the [~~marriage-application-worksheet~~]  
30 ***certificate of notice of intent to marry*** to the marriage [~~license~~] ***certificate*** as well as record  
31 the following information on the marriage [~~license~~] ***certificate***: the date that the marriage [~~license~~]  
32 ***certificate*** is issued, the signature of the clerk, and the name of the city or town of issuance.

33 VI. Pursuant to RSA 457:26, the date that the marriage [~~license~~] ***certificate*** is issued shall  
34 be not more than 90 days from the date that marriage intentions were filed.

35 VII. Upon request of the groom, the name of a legal guardian shall be substituted on the  
36 marriage [~~license~~] ***certificate*** for a natural parent's name, regardless of whether the groom who  
37 makes the request is of legal age at the time when intentions are being filed.

38 VIII. Upon request of the bride, the name of a legal guardian shall be substituted on the

1 marriage [license] **certificate** for a natural parent's name, regardless of whether the bride who  
2 makes the request is of legal age at the time when intentions are being filed.

3 IX. The substitution of stepparents' names shall not be permitted.

4 X. Persons entering dates on the marriage [license] **certificate** shall use the full or  
5 abbreviated name of the month rather than numerals.

6 XI. When listing the birthplace on the [~~marriage license~~] **certificate of notice of intent to**  
7 **marry**, if the person is known to have been born in the United States, but the state is unknown  
8 then "U.S.--Unknown" shall be entered, and, if the person is known to have been born in a foreign  
9 country, but the country is unknown, "Foreign Unknown" shall be entered.

10 XII. If no information is available regarding place of birth, "Unknown" shall be entered.

11 XIII. The prospective bride and groom shall review the information on the [~~marriage~~  
12 ~~license~~] **certificate of notice of intent to marry** for completeness and accuracy prior to signing  
13 the [~~marriage license~~] **certificate of notice of intent to marry**.

14 XIV. If a prospective bride or groom are not of legal age to marry, the co-signature of his or  
15 her parent shall be obtained, except when a court has issued a waiver authorizing the marriage in  
16 accordance with RSA 457:6.

17 XV. The officiant shall record the following on the [~~marriage license~~] **certificate of notice**  
18 **of intent to marry** after the marriage ceremony has taken place: certification that he or she is  
19 duly authorized to solemnize the marriage in accordance with RSA 457; the officiant's status,  
20 pursuant to RSA 457:31; the date of the marriage ceremony; the city, town or location and county  
21 where the couple were married; certification that the bride and groom were married by the officiant  
22 in conformance with RSA 457 and that the information noted is correct to the best of his or her  
23 knowledge; the signature of the officiant; the officiant's typed or printed name; the officiant's title  
24 and address; and an indication of whether the ceremony was religious or civil.

25 XVI. The date the [~~marriage license~~] **certificate of notice of intent to marry** is received  
26 by the clerk of the town or city from the officiant shall be recorded on the marriage certificate as the  
27 date the marriage registration is filed.

28 XVII. The [~~marriage license~~] **certificate of notice of intent to marry** shall include the  
29 signature of the clerk of the town or city and the name of the town or city.

30 3 Marriage Certificate of Notice of Intent to Marry and Certificate of Marriage. Amend RSA 5-  
31 C:42 to read as follows:

32 5-C:42 [~~Marriage License and Registration~~] **Certificate of Notice of Intent to Marry and**  
33 **Certificate of Marriage**.

34 I. A marriage performed in the state of New Hampshire shall be registered when the  
35 marriage certificate is filed in accordance with this section and RSA 5-C:41, signed by the clerk of  
36 the town or city, and forwarded to the division.

37 II. [~~An application for a marriage license~~] **A certificate of notice of intent to marry** may  
38 be [~~made~~] **applied for** in any city or town in the state of New Hampshire and the [~~marriage license~~]

*certificate of notice of intent to marry* shall be issued for a marriage ceremony to be performed in any city or town in the state of New Hampshire.

~~III. [No marriage license or court-ordered waiver issued by any other state shall be acceptable for marriage in the state of New Hampshire.]~~

~~[IV.]~~ The prospective bride and groom shall appear in person to the clerk of the town or city to file the marriage intentions and to sign the application for the ~~[marriage license]~~ *certificate of notice of intent to marry* unless either party or both are members of the armed forces and unable to appear in person.

~~[V.]~~ *IV.* If either party or both is a member of the armed forces and is unable to appear in person, the following shall apply: the armed services' legal representative shall prepare the ~~[marriage application worksheet]~~ *certificate of notice of intent to marry*; the completed application worksheet shall be signed by the service person; the armed services' legal representative, company commander or other superior officer, shall sign a statement attesting that the information provided is correct; the service person, if unable to appear, shall submit a signed statement authorizing the non-service person to sign for both the bride and groom; the completed application, and signed release if applicable, shall then be forwarded to the clerk of the town or city who issued the application; when the application worksheet is received by the clerk of the town or city, it shall then be used as an acceptable substitute for the personal appearance of the service person; the license shall then be prepared pursuant to RSA 5-C:41 with the non-service applicant being permitted to sign the license for both the bride and groom; and the application worksheet received from the service person shall be retained permanently by the clerk of the town or city.

~~[VI.]~~ *V.* One party may initiate the process of applying for a ~~[marriage license]~~ *certificate of notice of intent to marry*; however, the ~~[license]~~ *marriage certificate* shall not be issued until signatures have been obtained from both parties *and a copy of the notice provided.*

~~[VII.]~~ *VI.* An applicant for a ~~[marriage license]~~ *certificate of notice of intent to marry* shall provide positive identification consisting of a certified copy of a birth certificate or a driver's license or a passport or other license or identification that contains a photograph of the applicant and the applicant's name and date of birth *and a copy of the notice of intent published in a newspaper of statewide circulation.*

~~[VIII.]~~ *VII.* When both applicants for a ~~[marriage license]~~ *certificate of notice of intent to marry* are nonresidents of New Hampshire, both applicants shall be at least 18 years of age and, in accordance with RSA 457, there shall be no provision for an age waiver if both applicants and his or her parents are nonresidents of New Hampshire.

~~[IX.]~~ *VIII.* If either or both parties have been previously married, a certified copy of the final divorce decree or decrees, or a certified copy of the death record of each deceased spouse, shall be reviewed by the clerk of the town or city before the ~~[marriage license]~~ *certificate of notice of intent to marry* is issued. The clerk shall make notation upon the ~~[marriage license]~~ *certificate of notice of intent to marry* of such review.

[X.] **IX.** If a civil annulment is declared as the means of dissolving a former marriage, the clerk of the town or city shall review a certified copy of the civil annulment decree before the [marriage-license] **certificate of notice of intent to marry** is issued.

[XI.] **X.** A divorce decree in a foreign language shall not be acceptable for presentation as proof of final divorce, unless the divorce decree is translated into English and signed by the translator, with the signature certified by a justice of the peace or notary public. The cost of the translation, if any, shall be the responsibility of the applicant.

[XII.] **XI.** If a divorce decree from a foreign country is not available, the applicant shall provide an affidavit stating that he or she was divorced and a statement from the embassy of the foreign country stating that the records are not available.

[XIII.] **XII.** After the [marriage-application-worksheet] **certificate of notice of intent to marry** has been prepared and signed by the applicants, a [license] fee in accordance with RSA 457:29 shall be paid by the applicants to the clerk of the town or city. If the applicants do not use the [marriage-license] **certificate of notice of intent to marry** for any reason, the fee shall not be refunded.

[XIV.] **XIII.** The date of the signing of the [worksheet] **certificate of notice of intent to marry** by either the bride or groom, or the earlier of 2 dates if applicable, shall be used by the clerk of the town or city to indicate when the intention of marriage was received and recorded and the date to be used to establish the beginning of the time period during which the [license] **certificate** shall be valid. The [marriage-license] **certificate of notice of intent to marry** shall be valid pursuant to RSA 457:26 for not more than 90 days from the date the marriage intentions were filed. When 90 days have elapsed from the date the marriage intentions were filed and a completed marriage certificate or a delayed certificate of marriage has not been processed, the clerk of the town or city shall make a notation on the [marriage-application-worksheet] **certificate of notice of intent to marry** stating the marriage presumably did not take place. In the case where the marriage certificate is received within 6 months of the end of the 90-day period, the clerk of the town or city shall remove the notation and issue the certificate. In the case where the marriage certificate is received more than 6 months after the end of the 90-day period, the clerk of the town or city shall follow the procedure for issuing a delayed certificate of marriage.

4 Distribution of the Certificate of Marriage. Amend RSA 5-C:43 to read as follows:

5-C:43 Distribution of the **Certificate of Marriage** [License]. After the clerk of a town or city has forwarded the completed [marriage-license] **certificate of marriage** to the division, the registrar shall give the original to the prospective bride and groom. A **certificate of marriage** [license] may be mailed to the bride or groom if mailed via certified mail with return receipt requested and the cost for the certified mail handling shall be paid by the applicants. The bride and groom shall provide the [marriage-license] **certificate of intent to marry** to the officiant prior to the marriage ceremony.

5 Purpose and Intent. Amend RSA 457:1 to read as follows:

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457:1 Purpose and Intent. The purpose of this chapter is to affirm the right of 2 individuals desiring to marry and who **do not** otherwise ~~[meet the eligibility requirements]~~ **violate the prohibitions** of this chapter to have their marriage solemnized in a religious or civil ceremony in accordance with the provisions of this chapter.

6 Equal Access to Marriage. Amend RSA 457:1-a to read as follows:

457:1-a Equal Access to Marriage. Marriage is the ~~[legally recognized]~~ union of 2 people. Any person who otherwise meets the eligibility requirements of this chapter may marry any other eligible person regardless of gender. ~~[Each party to a marriage shall be designated "bride," "groom," or "spouse."]~~

7 Section Heading. Amend the section heading of RSA 457:4 to read as follows:

457:4 ~~[Marriageable]~~ **Eligibility.**

8 Completion of Notice of Intent. Amend RSA 457:22 to read as follows:

457:22 Completion of ~~[Marriage License Application]~~ **Notice of Intent.** All persons proposing to be joined in marriage within the state shall ~~[complete a marriage license application]~~ **place a notice of intent to marry in a newspaper not more than 90 days prior to nor less than 14 weeks prior to the date of the marriage. The persons proposing to be married shall present the town clerk of either proposed spouse with a copy of the notice** with all facts required by RSA 5-C:41 to be entered in any town clerk's office. The clerk shall record the ~~[application]~~ **notice** in a book to be kept for that purpose **and provide the parties proposing to marry with a certificate of notice of intent to marry.**

9 Requirements. Amend RSA 457:23, I to read as follows:

I. No ~~[marriage license]~~ **certificate of notice of intent to marry** shall be issued by any town or city clerk until the applicants have each provided for inspection the following documents:

10 Certificate of Notice of Intent. Amend RSA 457:26 to read as follows:

457:26 ~~[Marriage License]~~ **Certificate of Notice of Intent to Marry.** The town clerk shall deliver to the parties a ~~[marriage license]~~ **certificate of notice of intent to marry** embodying the facts required in RSA 457:22, specifying the time when the application was entered, which ~~[license]~~ **certificate** shall be delivered to the minister or magistrate who is to officiate, before the marriage is solemnized. The ~~[license]~~ **certificate** shall be valid for not more than 90 days from the date of filing.

11 Fee for Certificate of Notice of Intent. Amend RSA 457:29 to read as follows:

457:29 ~~[Marriage License]~~ **Certificate of Notice of Intent to Marry** Fee. The fee for the ~~[marriage license]~~ **certificate of notice of intent to marry** shall be \$50 to be paid by the parties entering into the marriage. The clerk shall forward \$43 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]~~ **notice of intent to marry**, and forwarding the \$43 portion of the ~~[marriage license]~~ **certificate of notice of intent to marry** fee.

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12 Solemnization of Marriage. Amend RSA 457:31, II to read as follows:

II. In a religious ceremony by any minister of the gospel *or other religious officiate* in the state who has been ordained *or recognized* according to the usage of his or her denomination, resides in the state, and is in regular standing with the denomination; by any member of the clergy who is not ordained but is engaged in the service of the religious body to which he or she belongs, and who resides in the state, after ~~[being licensed therefor by]~~ *registering with* the secretary of state; or within his or her parish, by any minister residing out of the state, but having a pastoral charge wholly or partly in this state.

13 Secretary of State. Amend RSA 457:31-a to read as follows:

457:31-a Secretary of State. The secretary of state may ~~[issue a license to]~~ *register* an unordained clergy who is a resident of this state and who is a member of and engaged in the service of a religious body which is chartered by the state if he or she presents a certification from that body that he or she is in its service. ~~[Said license shall authorize the clergy to solemnize marriage in this state.]~~ The fee for such ~~[license]~~ *registration* shall be \$5.

14 Special Commission. Amend RSA 457:32 to read as follows:

457:32 Special Commission. The secretary of state may issue a ~~[special license]~~ *temporary registration* to an ordained or non-ordained minister residing out of the state, or to an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, authorizing him or her in a special case to marry a couple within the state. In the case of an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, the secretary of state may require the submission of a copy of a valid commission or other indicia of authority to marry in the individual's state of residence as proof of existence of that authority. The names and residences of the couple proposed to be married in such special case shall be stated in the ~~[license]~~ *registration*, and no power shall be conferred to marry any other parties than those named therein. The fee for such license shall be \$25. The secretary of state shall keep a permanent record of all such ~~[special licenses]~~ *temporary registrations*, which record shall contain the names and residences of the couple to be married, *a copy of the certificate of notice of intent to marry*, and the name and residence of the minister to whom the ~~[license]~~ *temporary registration* is issued.

15 Judges of the United States and the State of New Hampshire. Amend RSA 457:32-a to read as follows:

457:32-a Judges of the United States and the State of New Hampshire.

I. The secretary of state may issue a ~~[license]~~ *temporary registration* to marry a couple within this state:

(a) To a judge of the United States residing in this state who is appointed pursuant to Article III of the United States Constitution, to a judge of the United States Bankruptcy Court residing in this state and appointed pursuant to Article I of the United States Constitution, or to a United States magistrate judge residing in this state and appointed pursuant to federal law; or



(b) To a state supreme court justice, superior court judge, or circuit court judge.

II. There shall be a fee of \$25 for each such ~~[license]~~ **temporary registration**, and the secretary of state shall maintain a record of all such ~~[special licenses]~~ **temporary registrations** issued. A copy of the ~~[marriage license]~~ **certificate of notice of intent to marry** of the couple proposed to be married shall be filed with the secretary of state who shall maintain a permanent record of all such ~~[marriage licenses]~~ **certificates** and the name and residence of the judge or magistrate performing the ceremony.

16 Solemnization of Marriage. Amend RSA 457:36 to read as follows:

457:36 Effect of Informality. No marriage solemnized before a person professing to be a justice of the peace ~~[or]~~ minister of the gospel, **or other religious officiate** shall be void, nor shall its validity be affected on account of want of jurisdiction or authority in such supposed justice, ~~[or]~~ minister, **or officiate** or on account of any omission or informality in the certificate of intention of marriage, if the marriage is in other respects lawful and has been consummated with the belief on the part of either of the parties thereto that they were lawfully married.

17 Certified Copy of Record. Amend RSA 457:38 to read as follows:

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

18 Cohabitation. Amend RSA 457:39 to read as follows:

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

19 Repeal. The following are repealed.

I. RSA 457:31-b, relative to solemnization of marriage; applicability, is repealed.

II. RSA 457:34, relative to penalty for solemnization without valid certificate.

20 Effective Date. This act shall take effect January 1, 2017.

**HB 1596-FN-LOCAL- FISCAL NOTE**

AN ACT                    changing the marriage license requirement to a requirement that couples obtain a certificate of notice of intent to marry and certificate marriage.

**FISCAL IMPACT:**

The Department of State states this bill, as introduced, may increase state expenditures by an indeterminable amount in FY 2017. There will be no fiscal impact to state, county, and local revenue or county and local expenditures.

**METHODOLOGY:**

The Department of State states this bill requires couples to obtain a certificate of notice of intent to marry and a certificate of marriage. The Department states this bill will require worksheet forms to be reprinted and delivered to local registrars at a cost of approximately \$3,000. The Department states software changes will need to be made to the New Hampshire Vital Records Information Network at a cost of approximately of approximately \$7,500. The Department anticipates all state expenditures will occur in FY 2017.

The Judicial Branch states this bill will have no significant fiscal impact on its operations.

The New Hampshire Municipal Association states this bill will have no fiscal impact on local revenue or expenditures.