

HB 436-FN-LOCAL – AS AMENDED BY THE HOUSE

26Mar2009... 0742h

2009 SESSION

09-0008

09/10

HOUSE BILL **436-FN-LOCAL**

AN ACT relative to civil marriage and civil unions.

SPONSORS: Rep. Splaine, Rock 16; Rep. McEachern, Rock 16; Rep. Butler, Carr 1; Rep. B. Richardson, Ches 5

COMMITTEE: Judiciary

ANALYSIS

This bill eliminates the exclusion of same gender couples from marriage, affirms religious freedom protections of clergy with regard to the solemnization of marriage, and provides a mechanism by which same gender couples who have entered into a civil union prior to the enactment of this bill may obtain the legal status 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 struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to civil marriage and civil unions.

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

1 Statutory Construction; Gender-Specific Terms. Amend RSA 21:3 to read as follows:

21:3 Number; Gender. Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender may extend and be applied to females. ***Gender-specific terms relating to the marital relationship or familial relationships, including without limitation, "spouse," "family," "marriage," "immediate family," "dependent," "next of kin," "man," "woman," "groom," "bride," "husband," "wife," "widow," or "widower," shall be construed to be gender-neutral for all purposes throughout New Hampshire law, whether in the Revised Statutes Annotated, state administrative or court rule, policy, common law, or any other source of civil state law.***

2 Marriage; Marriages Prohibited; Recognition of Out-of-State Marriages. RSA 457:1 - RSA 457:3 are repealed and reenacted to read as follows:

457:1 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.

457:2 Marriages Prohibited. No person shall marry his or her father, mother, father's brother, father's sister, mother's brother, mother's sister, son, daughter, brother, sister, son's son, son's

daughter, daughter's son, daughter's daughter, brother's son, brother's daughter, sister's son, sister's daughter, father's brother's son, father's brother's daughter, mother's brother's son, mother's brother's daughter, father's sister's son, father's sister's daughter, mother's sister's son, or mother's sister's daughter .

457:3 Recognition of Out-of-State Marriages. Every marriage legally contracted outside the state of New Hampshire, which would not be prohibited under RSA 457:2 if contracted in New Hampshire, shall be recognized as valid in this state for all purposes if or once the contracting parties are or become permanent residents of this state subsequent to such marriage, and the issue of any such marriage shall be legitimate. Marriages legally contracted outside the state of New Hampshire which would be prohibited under RSA 457:2 if contracted in New Hampshire shall not be legally recognized in this state. Any marriage of New Hampshire residents recognized as valid in the state prior to the effective date of this section shall continue to be recognized as valid on or after the effective date of this section.

3 Affirmation of Freedom of Religion in Marriage. RSA 457:37 is repealed and reenacted to read as follows:

457:37 Affirmation of Freedom of Religion in Marriage. Clergy persons as described in RSA 457:31 or other persons otherwise authorized under law to officiate at a civil marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion protected by the First Amendment to the United States Constitution or by part I, article V of the New Hampshire constitution.

4 Civil Unions; Other Jurisdictions; Reference Change. Amend RSA 457-A:8 to read as follows:

457-A:8 Other Jurisdictions. A civil union [~~or a marriage between a man and another man or a woman and another woman~~] legally contracted outside of New Hampshire shall be recognized as a civil union in this state, provided that the relationship does not violate the prohibitions of this chapter.

5 New Section; Civil Unions; Obtaining Legal Status of Marriage. Amend RSA 457-A by inserting after section 8 the following new section:

457-A:9 Obtaining Legal Status of Marriage. Two consenting persons who are parties to a valid civil union entered into prior to January 1, 2010 pursuant to this chapter may apply and receive a marriage license and have such marriage solemnized pursuant to RSA 457, provided that the parties are otherwise eligible to marry under RSA 457 and the parties to the marriage are the same as the parties to the civil union. Such parties may also apply by January 1, 2011 to the clerk of the town or city in which their civil union is recorded to have their civil union legally designated and recorded as a marriage, without any additional requirements of payment of marriage licensing fees or solemnization contained in RSA 457. Upon application, the parties shall be issued a marriage certificate, and such marriage certificate shall be recorded with the division of vital records administration. Any civil union shall be dissolved by operation of law by any marriage of the same parties to each other, as of the date of the marriage stated in the certificate.

6 Effective Date. This act shall take effect January 1, 2010.

LBAO

09-0008

Amended 04/01/09

HB 436 FISCAL NOTE

AN ACT relative to civil marriage and civil unions.

FISCAL IMPACT:

The Secretary of State states this bill, **as amended by the House (Amendment #2009-0742h)**, will increase state expenditures by \$52,500 in FY 2010 and decrease state and local revenue by an amount less than \$10,000 in FY 2010 and FY 2011. The New Hampshire Retirement System states this bill will increase state restricted expenditures by an indeterminable amount in FY 2010 and each year thereafter. This bill will have no fiscal impact

on county revenues and county or local expenditures.

METHODOLOGY:

This bill eliminates the exclusion of same gender couples from marriage, affirms religious freedom protections of clergy with regard to the solemnization of marriage, and provides a mechanism by which same gender couples who have entered into a civil union prior to the enactment of this bill may obtain the legal status of marriage. The Secretary of State states this bill will increase state expenditures by the one time costs associated with the necessary software changes, revision and printing of new forms, and mailing costs associated with the distribution of the new forms in FY 2010. The Secretary estimates costs of \$44,000 for necessary software changes, \$8,000 for printing of forms, and \$500 for costs associated with the distribution of the new forms ($\$44,000 + 8,000 + 500 = \$52,500$).

The Secretary also states that the proposed legislation would reduce state and local revenue by an amount less than \$10,000 in FY 2010 and FY 2011. According to the Secretary, the reduction in revenue would result from the provision contained within the proposed legislation allowing two consenting persons party to a valid civil union entered into prior to January 1, 2010, to convert the civil union to a marriage, waiving the \$12.00 fee, until January 1, 2011. The Secretary's estimate is based on an assumption that all 602 Civil Unions entered into since the start of the Civil Union legislation on January 1, 2008 would be converted into marriages.

The New Hampshire Retirement System states this bill will increase state restricted expenditures by an indeterminable amount in FY 2010 and each year thereafter. The Retirement System attributes the increase in restricted expenditures to the inherent conflict with the federal Defense of Marriage Act which states; marriage means only the legal union between one man and one woman and spouse refers only to a person of the opposite sex who is a husband or a wife. The Retirement System states the treatment of a same gender spouse as a spouse under some provisions of RSA 100-A would result in a violation of IRS Code Section 401(a). This violation would terminate the retirement system's status as a qualified pension trust and resulting exemption to federal taxation. The resulting tax liability would increase state restricted expenditures by an indeterminable amount in FY 2010 and each year thereafter.

The Insurance Department, Department of Health and Human Services, and Department of Administrative Services state this bill will not have a fiscal impact on the departments.

The Judicial Branch states this bill will not have a fiscal impact on the Branch.

This bill does not contain an appropriation.