

HB 437-FN – AS INTRODUCED

2011 SESSION

11-0014

09/01

HOUSE BILL *437-FN*

AN ACT relative to the definition of marriage.

SPONSORS: Rep. Bates, Rock 4; Rep. Kappler, Rock 2; Rep. Cebrowski, Hills 18; Rep. Sorg, Graf 3; Rep. Ulery, Hills 27; Rep. C. Vita, Straf 3; Rep. Silva, Hills 26; Rep. T. Smith, Merr 9; Rep. Gionet, Graf 3; Rep. Balboni, Hills 21; Sen. Groen, Dist 6; Sen. White, Dist 9

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits same sex marriages.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

11-0014

09/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the definition of marriage.

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

1 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 RSA 457:1 – RSA 457:3 are repealed and reenacted to read as follows: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 Purpose. The legislature finds and declares that:

I. Marriage is not a creature of statute but rather a social institution which predates organized government. As the United States Supreme Court has noted, marriage has roots that are “older than the Bill of Rights – older than our political parties, older than our school system.” *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965).

II. As many scholars and experts have noted, marriage, understood as the legal union of a man and a woman, serves and supports important social goods in which the government of New Hampshire has a compelling interest.

III. The vast majority of children are conceived by acts of passion between men and women – sometimes unintentionally. Because of this biological reality, New Hampshire has a unique, distinct, and compelling interest in promoting stable and committed marital unions between opposite-sex couples so as to increase the likelihood that children will be born to and raised by both of their natural parents. No other domestic relationship presents the same level of state interest.

IV. A child has a natural human right to the love, care and support of his or her own mother and father, whenever possible. Marriage is the primary social institution that promotes that ideal and encourages its achievement.

457:2 Marriages Prohibited; Men; Women.

I. No man shall marry his mother, father’s sister, mother’s sister, daughter, sister, son’s daughter, daughter’s daughter, brother’s daughter, sister’s daughter, father’s brother’s daughter, mother’s brother’s daughter, father’s sister’s daughter, mother’s sister’s daughter, or any other man.

II. No woman shall marry her father, father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son, sister's son, father's brother's son, mother's brother's son, father's sister's son, mother's sister's son, or any other woman.

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.

2 Marriageable. Amend RSA 457:4 to read as follows:

457:4 Marriageable. No male below the age of 14 years and no female below the age of 13 years shall be capable of contracting a valid marriage ~~[that is entered into by one male and one female]~~, and all marriages contracted by such persons shall be null and void. ~~[No male below the age of 18 and no female below the age of 18 shall be capable of contracting a valid marriage between persons of the same gender, and all marriages contracted by such persons shall be null and void.]~~

3 Marriage; Solemnization of Marriage. RSA 457:31 is repealed and reenacted to read as follows:

457:31 Who May Solemnize. Marriage may be solemnized by a justice of the peace as commissioned in the state; by any minister of the gospel in the state who has been ordained 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, resides in the state, after being licensed therefor by the secretary of state; within his or her parish, by any minister residing out of the state, but having a pastoral charge wholly or partly in this state; by judges of the United States appointed pursuant to Article III of the United States Constitution; by bankruptcy judges appointed pursuant to Article I of the United States Constitution; or by United States magistrate judges appointed pursuant to federal law.

4 Solemnization of Marriage; Exceptions. RSA 457:37 is repealed and reenacted to read as follows:

457:37 Exceptions. Nothing contained in this chapter shall affect the right of Jewish Rabbis residing in this state, or of the people called Friends or Quakers, to solemnize marriages in the way usually practiced among them, and all marriages so solemnized shall be valid. Jewish Rabbis residing out of the state may obtain a special license as provided by RSA 457:32.

5 Repeal. The following are repealed:

I. RSA 100-A:2-b, relative to marriage.

II. RSA 457:31-b, relative to solemnization of marriage; applicability.

III. RSA 457:45, relative to civil union recognition.

IV. RSA 457:46, relative to obtaining legal status of marriage.

6 Effective Date. This act shall take effect upon its passage.

LBAO

11-0014

Revised 02/07/11

HB 437 FISCAL NOTE

AN ACT relative to the definition of marriage.

FISCAL IMPACT:

The Department of State states this bill will increase state general fund expenditures by \$50,500 in FY 2012. The Department of Health and Human Services states this bill will have an indeterminable impact on state expenditures, and decrease state and local revenues by an indeterminable amount in FY 2012 and each year thereafter. The New Hampshire Retirement System states this bill will reduce state expenditures by an indeterminable amount in FY 2012 and each year thereafter, and the New Hampshire Municipal Association states this bill will reduce local revenue by an indeterminable amount in FY 2012 and each year thereafter. There will be no fiscal impact on county revenues, or county and local expenditures.

METHODOLOGY:

The Department of State states this bill prohibits same sex marriages and civil unions. Based on an estimate from the Department of Information Technology obtained in 2010, the Department of State estimates the costs associated with the programming changes necessary to repeal same sex marriages and civil unions would be approximately \$45,000. The Department also notes there would be costs associated with reprinting the worksheets used for marriages and the mailing of the reprinted worksheets to the municipalities. The Department estimates these costs to be approximately \$5,500 resulting in an estimated increase in state expenditures of \$50,500 (\$45,000 + \$5,500) in FY 2012.

The Department of Health and Human Services states under current law, individuals who had previously entered into same sex marriages and civil unions were not eligible for federally funded benefits in accordance with the Federal Defense of Marriage Act. Consequently, the only programs affected by marriage of individuals of the same gender are the state Supplemental Assistance Programs. The Department is unable to determine the fiscal impact of the proposed legislation on those categories of recipients as the marriage status of recipients' impacts eligibility in different ways for

different assistance categories. The Department of Health and Human Services also states the proposed legislation will reduce state general fund, state restricted, and local revenues as a result of fewer marriage licenses being issued. Although the Department has no information on which to estimate the number of marriage licenses issued for same sex marriages each year, the Department notes that for each marriage license fee of \$50 collected, \$38 goes to the Department to support the fund for domestic violence grant program; \$7 is retained by the municipality for associated administrative costs; and \$5 goes to the general fund.

The New Hampshire Retirement System states the proposed legislation would decrease state expenditures by an indeterminable amount in FY 2012 and each year thereafter. The System states there would be a reduction in employer contributions of less than \$10,000 due to the very few types of benefits currently payable to same gender couples and that there are few if any retirement system members who currently have a same sex spouse.

The New Hampshire Municipal Association states to the extent fewer marriage licenses are issued by cities and towns, local revenues will decrease in FY 2012 and each year thereafter.