Bill as Introduced

HB 185 – AS INTRODUCED

2003 SESSION

03-0670
01/09

HOUSE BILL ***185***

AN ACT relative to pretermitted heirs.

SPONSORS: Rep. J. Pratt, Ches 24; Rep. Craig, Hills 50; Rep. Rowe, Hills 47; Sen. Foster, Dist 13; Sen. Peterson, Dist 11

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the law relative to pretermitted heirs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 185 – AS INTRODUCED

03-0670
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to pretermitted heirs.

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 RSA 551:10 is repealed and reenacted to read as follows:

551:10 Child Not Named. If any person shall die testate leaving a child born after the date of the will who is still living or adopted after the date of the will who is still living and who is not provided for or referred to in the will, the child shall, unless it appears to the probate court that the omission was intentional and not occasioned by accident or mistake, take the portion of the testator's estate to which it would have been entitled if the testator had died intestate, provided that if the will provides for another child or children the pretermitted child shall take no more than the largest bequest or devise to a child named in such will.

2 Wills; Share of Unnamed Child. RSA 551:11 is repealed and reenacted to read as follows:

551:11 Share of Unnamed Child. If the property not devised or bequeathed by the testator shall be insufficient to satisfy the just share of such child after allowing for advancements to such child, the same shall be made up from the testate estate in such equitable manner as the probate court shall deem proper.

3 Effective Date. This act shall take effect January 1, 2004.

Amendments

Rep. J. Pratt, Ches. 24
February 6, 2003
2003-0209h
01/09

Amendment to HB 185

Not Used

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

551:10 Child Not Named. If any person shall die testate leaving a child born or adopted after the date of the will and such child is not provided for or referred to in the will, the child shall, unless it appears to the probate court that the omission was intentional and not occasioned by accident or mistake, take the portion of the testator's estate to which it would have been entitled if the testator had died intestate, provided that if the will provides for another child or children the pretermitted child shall take no more than the largest bequest or devise to a child named in such will.

Rep. Rowe, Hills. 47
February 19, 2003
2003-0351h
01/09

Amendment to HB 185

Not Used

Amend the bill by replacing section 1 with the following:

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

551:10 Child Not Named. Every child of the testator, born prior to the testator's death or, if the testator is a male a child of the testator born within 9 months of the death of the testator, or a child adopted by the testator whether or not the adoption proceedings have been completed at the time of the testator's death and who is not provided for or referred to in the will, the child shall, unless it appears to the probate court that the omission was intentional and not occasioned by mistake, take the portion of the testator's estate to which the child would be entitled to if the testator had died intestate; provided, that if the will provides for another child or children the pretermitted child shall take no more than the average bequest or devise to a child named in such will. If a pretermitted child is deceased at the time of the testator's death and would be entitled to receive a bequest or devise under this section if living, then the issue of said deceased child shall receive by right of representation.

Rep. J. Pratt, Ches. 24
March 6, 2003
2003-0521h
01/09

Amendment to HB 185

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

551:10 Child Not Named. If any person shall die testate leaving a child born or adopted after the date of the will, or, if there are codicils, the date of the most recent codicil thereto, and if such child is not provided for or referred to therein, that child shall take the portion of the testator's estate to which he or she would have been entitled if the testator had died intestate unless it appears to the probate court that the omission was intentional and not occasioned by accident or mistake; provided, however, that if the will provides for another child or children, the pretermitted child shall take no more than the largest bequest or devise to a child named in such will.

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 185

BILL TITLE: relative to pretermitted heirs.

DATE: January 23, 2003

LOB ROOM: 208 **Time Public Hearing Called to Order:** 11:22 a.m.

Time Adjourned: 11:40 a.m.

(please circle if present)

Committee Members: Reps. Mock, Rowe, Jacobson, Ford, Dudley, Soltani, Woods, Rice, Souza, Desmarais, Haytayan, Mooney, Morris, Sorg, J. Wheeler, Wall, J. Pratt, Craig, Lasky, Potter and Franklin.

Bill Sponsors: Rep. J. Pratt, Rep. Craig, Rep. Rowe, Sen. Foster, Sen. Peterson

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. J. Pratt, prime sponsor – supports
- Opened the hearing

Judge John Maher, Probate Court – supports
- This bill addresses the failure to mention a child who could be one of 2, 3 or more children

G. Wells Anderson – supports
- Cited a case where this bill would have corrected certain situations
- If you specify in a will that everything goes to a child, this request will be honored under this bill.
- Oversight is also addressed (i.e., if a child is born after a death or after an adoption is finalized, the will is addended)
- If the intent is to not inherit, don't leave a dollar – leave nothing

Questions:

Franklin	Woods
Wall	Souza
Rice	

Pink Cards:
- Sen. Andrew Peterson, co-sponsor
- Judge John Maher, Probate Court, Concord. Supports the bill.
- G. Wells Anderson, Probate Comm., 14 Centre St., Concord 03301. 225-6655. Supports the bill.

Respectfully submitted,

Rep. Terri C. Dudley
Committee Clerk

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 185

BILL TITLE: relative to pretermitted heirs.

DATE: Feb. 5, 2003

Subcommittee Members: Reps. J. Pratt, Sorg, Craig, Rowe and Haytayan

Comments and Recommendations:

Amendments:

Sponsor: Rep. J. Pratt	OLS Document #:	0209h	Adopted
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Sorg

Seconded by Rep. Rowe

Vote: 4-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. John M. Pratt
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 185

BILL TITLE: relative to pretermitted heirs.

DATE: Feb. 5, 2003

Subcommittee Members: Reps. J. Pratt, Song, Craig, Rowe & Hartigan

Comments and Recommendations:

Amendments:

Sponsor: Rep. Pratt OLS Document #: 0209h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Craig

Seconded by Rep. Rowe

Vote: 4-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SECOND SUBCOMMITTEE WORK SESSION ON HB 185

BILL TITLE: relative to pretermitted heirs.

DATE: Mar. 3, 2003

Subcommittee Members: Reps. J. Pratt, Sorg, Craig, Rowe, Haytayan

Comments and Recommendations:

Amendments:

Sponsor: Rep. J. Pratt	OLS Document #:	0521h	Adopted
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.) **AMENDMENT**

Moved by Rep. Robert H. Rowe

Seconded by Rep. Gregory M. Sorg

Vote: 4-0

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Robert H. Rowe

Seconded by Rep. Gregory M. Sorg

Vote: 4-0

Respectfully submitted,

Rep. John M. Pratt
Subcommittee Chairman

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 185

BILL TITLE: relative to pretermitted heirs.

DATE: March 3 2003

Subcommittee Members: Reps. J. Pratt, Sorg, Craig, Rowe, Haytayan

Comments and Recommendations: Haytayan absent

Amendments:

Sponsor: Rep. Pratt OLS Document #: —

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Rowe

Seconded by Rep. Sorg

Vote: 4-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Testimony

HB 185

1. Every child of the testator, born prior the testator's death or born within 8 months after the decease of the testator, or a child adopted by the testator whether or not the adoption proceeding have been completed at the time of the testators death and who is not provided for or referred to in the will, the child shall, unless it appears to the probate court that the omission was intentional and not occasioned by mistake, take the portion of the testator's estate to which the child would be entitled to if the testator had died intestate, provided that if the will provides for another child or children the pretermitted child shall take no more than the average bequest or devise to a child named in such will. If a pretermitted child is deceased at the time of the testator's death and would be entitled to receive a bequest or devise under this statute if living, then the issue of said deceased child shall receive by right of representation.

2. Same as bill

3. Effective date same as bill

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 185

BILL TITLE: **relative to pretermitted heirs.**

DATE: March 17, 2003

LOB ROOM: 208

Amendments:

Sponsor: Rep. Pratt	OLS Document #:	0521h	Adopted
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.) **AMENDMENT**

Moved by Rep. John M. Pratt

Seconded by Rep. Gregory M. Sorg

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. John M. Pratt

Seconded by Rep. Gregory M. Sorg

Vote: 14-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 14-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 185

BILL TITLE: **relative to pretermitted heirs.**

DATE: 03-17-03

LOB ROOM: 208

Amendments:

Sponsor: Rep. Pratt — OLS Document #: 0521h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) Amendment

Moved by Rep. Pratt

Seconded by Rep. Sorg

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A) ITL, Interim Study (Please circle one.)

Moved by Rep. Pratt

Seconded by Rep. Sorg

Vote: 14-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

JUDICIARY

Bill #: HB 185 Title: Relative to permitted heirs

PH Date: ____/____/____ Exec Session Date: 03/17/03

Motion: Amendment Amendment #: 0521h

MEMBER	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Rowe, Robert H, V Chairman	✓	
Jacobson, Alf E	✓	
Ford, Nancy M	✓	
Dudley, Terri C, Clerk	✓	
Soltani, Tony F	–	
Woods, Phyllis L	✓	
Rice, Thomas E P	–	
Souza, Kathleen F	–	
Desmarais, Vivian J	✓	
Haytayan, Harry M	–	
Mooney, Maureen C	–	
Morris, Richard W	–	
Sorg, Gregory M	✓	
Wheeler, James E	✓	
Wall, Janet G	✓	
Pratt, John	✓	
Craig, James W	–	
Lasky, Bette R	✓	
Potter, Frances D	✓	
Franklin, Peter E	✓	
TOTAL VOTE: Printed: 1/23/2003	14	0

OFFICE OF THE HOUSE CLERK 2003 SESSION

JUDICIARY

Bill #: HB 185 Title: Relative to permitted heirs

PH Date: ___/___/___ Exec Session Date: 03/17/03

Motion: OTP/A Amendment #:

MEMBER	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Rowe, Robert H, V Chairman	✓	
Jacobson, Alf E	✓	
Ford, Nancy M	✓	
Dudley, Terri C, Clerk	✓	
Soltani, Tony F	–	
Woods, Phyllis L	✓	
Rice, Thomas E P	–	
Souza, Kathleen F	–	
Desmarais, Vivian J	✓	
Haytayan, Harry M	✓	
Mooney, Maureen C	–	
Morris, Richard W	–	
Sorg, Gregory M	✓	
Wheeler, James E	✓	
Wall, Janet G	✓	
Pratt, John	✓	
Craig, James W	–	
Lasky, Bette R	✓	
Potter, Frances D	✓	
Franklin, Peter E	✓	
TOTAL VOTE:	14	0

Printed: 1/23/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 185**

TITLE: relative to pretermitted heirs.

DATE: March 17, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill reverses existing law so that a child born or adopted after a will has been drawn up will receive his or her fair share of the estate, as if that child had been named in the will, unless a probate court finds that the omission was intentional and not the result of an accident or a mistake.

Vote 14-0.

Rep. John M. Pratt
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

CONSENT CALENDAR

Judiciary

HB 185, relative to pretermitted heirs. **OUGHT TO PASS WITH AMENDMENT**

Rep. John M. Pratt for Judiciary: This bill reverses existing law so that a child born or adopted after a will has been drawn up will receive his or her fair share of the estate, as if that child had been named in the will, unless a probate court finds that the omission was intentional and not the result of an accident or a mistake. **Vote 14-0.**

Rep. John M. Pratt for Judiciary: This bill reverses existing law so that a child born or adopted after a will has been drawn up will receive his or her fair share of the estate, as if that child had been named in the will, unless a probate court finds that the omission was intentional and not the result of an accident or a mistake. Vote 14-0.