

CHAPTER 261  
HB 1448 - FINAL VERSION

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

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 struck through.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 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            261:1 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 RSA 551:10 is repealed and reenacted to read as follows: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 under the  
7 testator's will.

8            II. Except as provided in paragraph III, if a testator fails to provide in the testator's will for any of  
9 the testator's children born or adopted after the execution of the will, the omitted after-born or after-  
10 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 after-born  
12 or after-adopted child receives a share in the estate equal in value to that which the child would have  
13 received had the testator died intestate, unless the will devised all or substantially all of the estate to the  
14 other parent of the omitted child and that other parent survives the testator and is entitled to take under  
15 the will. The share to which the omitted child shall be entitled under this subparagraph shall be satisfied  
16 first from the residue of the estate and if insufficient, from the other assets of the estate pro rata.

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

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

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

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

29                            (4) In satisfying a share provided by this paragraph, devises to the testator's children who  
30 were living when the will was executed abate ratably. In abating the devises of the then-living children,

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1 the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent  
2 possible.

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

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

8 261:2 Repeal. RSA 551:11, relative to the share of an unnamed child, is repealed.

9 261:3 Applicability. This act shall apply to all wills executed before or after the effective date of this  
10 act, except that this act shall not apply to those wills executed by a testator who died prior to the effective  
11 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