

COHABITATION OF CERTAIN UNMARRIED COUPLES

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Senate Bill 56 as reported from House committee

Sponsor: Sen. Stephanie Chang

House Committee: Judiciary

Senate Committee: Civil Rights, Judiciary, and Public Safety

Complete to 6-28-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 56 would amend Chapter XLVIII (Indecency and Immorality) of the Michigan Penal Code. Currently, any man or woman who are not married to each other, and who lewdly and lasciviously associate and cohabit together, are guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000. The bill would eliminate this crime.¹

MCL 750.335

BRIEF DISCUSSION:

According to committee testimony, Senate Bill 56 would effectively remove a barrier that prevents unmarried heterosexual couples from taking advantage of certain federal and state income tax breaks because of a federal rule that does not allow a person to declare another as a dependent on a tax form if the relationship violates the law of the locality where they live. For unmarried couples, this means that the main wage earner cannot declare a stay-at-home or underemployed partner as a dependent, even when all other tests for declaring them as a dependent are met. (Children from the relationship may be claimed, but not the partner.) This results in the couple's paying higher taxes and not being able to qualify for certain tax credits, including a portion of the Michigan Home Heating Credit. This can be particularly burdensome for low-income families. The bill would end the restriction on claiming a partner as a dependent because of being in violation of this state law, but all other tests for claiming a person as a dependent would remain in place, filing status would not change, and the couple would not qualify for tax benefits reserved for married individuals.

Many supporters also argue that the bill would eliminate an antiquated and unenforced law that makes it a crime for two unmarried individuals to live together as a heterosexual couple in a day and age when such living arrangements are commonplace. According to news reports, Michigan and Mississippi are the only two states with active laws against cohabitation. The Michigan Supreme Court noted 25 years ago that this statute "has not been used to successfully prosecute unmarried couples who were cohabiting for nearly sixty years."

Opponents of the bill argue that, although the statute is unenforced, repealing it would send a wrong signal about the importance of marriage as a social institution.

¹ The bill would retain the current misdemeanor offense in the same section of the code for any individual, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior. That offense is also punishable by imprisonment for up to one year or a fine of up to \$1,000. Prosecution must be commenced within one year from the time the offense was committed.

FISCAL IMPACT:

Senate Bill 56 would likely have no fiscal impact on the state or on local units of government because provisions of the bill do not appear to be actively enforced resulting in charges for offenses. The bill would eliminate the crime of cohabitation outside of marriage, which is considered to be a misdemeanor. To the extent there is any reduction in the amount of misdemeanor convictions for this specific offense, the fiscal impact would be reduced costs for county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. There would be a corresponding reduction in costs for local court systems if the court caseload and related administrative costs were reduced. Any lost penal fine revenue would reduce funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

A representative of the Michigan Association of Certified Public Accountants testified in support of the bill. (6-7-23)

The following entities indicated support for the bill:

- Michigan State Police (6-7-23)
- United Way for Southeastern Michigan (6-14-23)
- Detroit Regional Chamber (6-14-23)
- HIV/AIDS Alliance of Michigan (6-14-23)
- ACLU of Michigan (6-7-23)
- Mental Health Association of Michigan (6-7-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.