

Explanation for proposed repeal of Michigan's statutory ban on cohabitation, MCL 750.335.

MCL 750.335 provides that any man or woman not married to each other who "lewdly and lasciviously associates and cohabitates" is guilty of a misdemeanor. The term "lewd and lascivious" activity refers to premarital sex. This provision thus makes premarital sex between individuals who cohabit a crime.

This is recognized as an outdated law, and only two states still have these laws in effect; Michigan, Mississippi. In 2003 the US Supreme Court ruled in *Lawrence v Texas* that laws against sodomy violate the 14th amendment, and since then state courts have consistently ruled under *Lawrence* that laws against fornication and cohabitation are unconstitutional without regard to whether they single out gay people. Thus this law is unconstitutional. As a result it is very likely that this law has not been enforced in any jurisdiction within Michigan.

However, despite not being enforced, the law has one very negative federal tax impact. A dependent exemption is generally available for a "qualifying relative," which is defined as a member of a person's "household" who lived with the taxpayer and meets certain income and support tests. However, Internal Revenue Code §152(f)(3) states that, "An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law."

Therefore, as a result of this provision of Michigan law, Michigan residents are prohibited from claiming a dependent exemption for a boyfriend or girlfriend who they live with and for whom they provide more than 50% of their support because cohabitation remains illegal under MCL 750.335. While the law is unconstitutional and not otherwise enforced, taxpayers and tax preparers are obligated to obey the federal tax law as written and therefore cannot legally claim a dependent exemption for a girlfriend or boyfriend who lives with them and who they support.

Amending MCL 750.335 would eliminate this unfair federal tax "penalty" on Michigan resident taxpayers, and place Michigan taxpayers on equal footing with taxpayers in 48 other states.

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THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

**750.335 ~~Lewd and lascivious cohabitation and~~ Open and Gross
lewdness.**

Sec. 335.

Any man or woman, ~~not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior,~~ is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.