

2009 SESSION

09-0722

08/04

HOUSE BILL **415**

AN ACT adding certain terms regarding non-discrimination to the laws.

SPONSORS: Rep. Butler, Carr 1; Rep. B. Richardson, Ches 5; Sen. Fuller Clark, Dist 24

COMMITTEE: Judiciary

ANALYSIS

This bill defines gender identity and expression and adds it to the list of classes of people protected from discrimination.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT adding certain terms regarding non-discrimination to the laws.

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

1 New Section; Statutory Construction; Gender Identity and Expression. Amend RSA 21 by inserting after section 50 the following new section:

21:51 Gender Identity and Expression. "Gender identity or expression" means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

2 State Commission for Human Rights; Title and Purposes of Chapter. Amend RSA 354-A:1 to read as follows:

354-A:1 Title and Purposes of Chapter. This chapter shall be known as the "Law Against Discrimination." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, ***gender identity or expression***, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A state agency is hereby created with power to eliminate and prevent discrimination in employment, in places of public accommodation and in housing accommodations because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. In addition, the agencies and councils so created shall exercise their authority to assure that no person be discriminated against on

account of sexual orientation.

3 New Paragraph; State Commission for Human Rights. Amend RSA 354-A:2 by inserting after paragraph XIV-d the following new paragraph:

XIV-e. “Gender identity or expression” means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

4 State Commission for Human Rights; General Powers and Duties of the Commission. Amend RSA 354-A:5, VIII to read as follows:

VIII. To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purpose of this chapter, and the commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination, because of age, sex, ***gender identity or expression***, race, color, sexual orientation, marital status, familial status, or physical or mental disability, religious creed or national origin, in order to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the state, and make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the commission may make provision for technical clerical assistance to such agencies and councils and for the expenses of such assistance.

5 State Commission for Human Rights; General Powers and Duties of the Commission. Amend RSA 354-A:5, IX to read as follows:

IX. To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of age, sex, ***gender identity or expression***, race, color, marital status, familial status, physical or mental disability, religious creed or national origin, and on account of sexual orientation.

6 State Commission for Human Rights; Opportunity for Employment Without Discrimination a Civil Right. Amend RSA 354-A:6 to read as follows:

354-A:6 Opportunity for Employment Without Discrimination a Civil Right. The opportunity to obtain employment without discrimination because of age, sex, ***gender identity or expression***, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. In addition, no person shall be denied the benefits of the rights afforded by this section on account of that person’s sexual orientation.

7 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-A:7, I to read as follows:

I. For an employer, because of the age, sex, ***gender identity or expression***, race, color, marital status, physical or mental disability, religious creed, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person’s sexual orientation.

8 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-A:7, II to read as follows:

II. For a labor organization, because of the age, sex, ***gender identity or expression***, race, color, marital status, physical or mental disability, creed, or national origin of any individual, to exclude from full

membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

9 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-A:7, III to read as follows:

III. For any employer or employment agency to print or circulate or to cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, sex, race, color, marital status, physical or mental disability, religious creed or national origin or any intent to make any such limitation, specification or discrimination in any way on the ground of age, sex, ***gender identity or expression***, race, color, marital status, physical or mental disability, religious creed or national origin, unless based upon a bona fide occupational qualification; provided, however, that nothing in this chapter shall limit an employer after the offer of hire of an individual from inquiring into and keeping records of any existing or pre-existing physical or mental conditions. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

10 State Commission for Human Rights; Equal Housing Opportunity Without Discrimination a Civil Right. Amend RSA 354-A:8 to read as follows:

354-A:8 Equal Housing Opportunity Without Discrimination a Civil Right. The opportunity to obtain housing without discrimination because of age, sex, ***gender identity or expression***, race, creed, color, marital status, familial status, physical or mental disability or national origin is hereby recognized and declared a civil right. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

11 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-A:10 to read as follows:

354-A:10 Unlawful Discriminatory Practices. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, sublessee, assignee, managing agent or other person having the right to rent or lease a dwelling or commercial structure or being in the business of selling or renting dwellings or commercial structures:

I. To refuse to sell or rent after the receipt of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or commercial structure to any person because of age, sex, ***gender identity or expression***, race, color, marital status, familial status, physical or mental disability, religion or national origin. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

II. To discriminate against any person in the terms, conditions, or privilege of sale or rental of a dwelling or commercial structure, or in the provision of services or facilities in connection therewith, because of age, sex, ***gender identity or expression***, race, color, marital status, familial status, physical or mental disability, religion or national origin. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

III. To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of a dwelling or commercial structure that indicates any preference, limitation, or discrimination based on age, sex, ***gender identity or expression***, race, color, marital status, familial status, physical or mental disability, religion or national origin, or an intention to make any such preference, limitation or discrimination. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

IV. To represent to any person because of age, sex, ***gender identity or expression***, race, color, marital status, familial status, physical or mental disability, religion or national origin that any dwelling or commercial structure is not available for inspection, sale, or rental when such dwelling is in fact so available. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

V. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular age, sex, ***gender identity or expression***, race, color, marital status, familial status, physical or mental disability, religion or national origin. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

VI. To evict a tenant solely on the grounds that the person has acquired immunodeficiency syndrome (AIDS) or is regarded to have acquired immune deficiency syndrome.

VII. For any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of age, race, color, religion, sex, ***gender identity or expression***, disability, familial status, marital status, or national origin. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

VIII. To deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against that person in the terms or conditions of such access, membership, or participation, on account of age, familial status, sex, ***gender identity or expression***, race, color, creed, disability, national origin, marital status, or sexual orientation.

12 State Commission for Human Rights; Equal Access to Public Accommodations a Civil Right. Amend RSA 354-A:16 to read as follows:

354-A:16 Equal Access to Public Accommodations a Civil Right. The opportunity for every individual to have equal access to places of public accommodation without discrimination because of age, sex, ***gender identity or expression***, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

13 State Commission for Human Rights; Unlawful Discriminatory Practices in Public Accommodations. Amend RSA 354-A:17 to read as follows:

354-A:17 Unlawful Discriminatory Practices in Public Accommodations. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the age, sex, ***gender identity or expression***, race, creed, color, marital status, physical or mental disability or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of age, sex, ***gender identity or expression***, race, creed, color, marital status, physical or mental disability or national origin; or that the patronage or custom thereof of any person belonging to or purporting to be of any particular age, sex, ***gender identity or expression***, race, creed, color, marital status, physical or mental disability or national origin is unwelcome, objectionable or acceptable, desired or solicited. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

14 Department of Administrative Services; Division of Personnel. Amend RSA 21-I:42, XVI to read as

follows:

XVI. Developing and implementing an equal employment opportunity program that will ensure the employment of all qualified people regardless of age, sex, ***gender identity or expression***, race, color, sexual orientation, ethnic background, marital status, or physical or mental disability. This program shall include a review and revision of the job classification process and testing process to ensure that they are free from either conscious or inadvertent bias.

15 Department of Administrative Services; Classified Employees; Prohibitions; Penalty. Amend RSA 21-I:52, I to read as follows:

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, ***gender identity or expression***, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation. Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

16 Department of Administrative Services; Classified Employees; Appeals. Amend RSA 21-I:58, I to read as follows:

I. Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, ***gender identity or expression***, race, color, ethnic background, marital status, or disabling condition, or on account of the person's sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. In all cases, the personnel appeals board may

reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.

17 Residential Care and Health Facility; Patients' Bill of Rights. Amend RSA 151:21, XVI to read as follows:

XVI. The patient shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, ***gender identity or expression***, age, disability, marital status, or source of payment, nor shall any such care be denied on account of the patient's sexual orientation.

18 Residential Care and Health Facility; Patients' Bill of Rights. Amend RSA 151:21-b, II(b) to read as follows:

(b) Receive appropriate and professional care without discrimination based on race, color, national origin, religion, sex, ***gender identity or expression***, disability, or age, nor shall any such care be denied on account of the patient's sexual orientation.

19 Civil Rights Act; Enforcement. Amend RSA 354-B:1, I to read as follows:

I. All persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire without being subject to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, ***gender identity or expression***, or disability. "Threatened physical force" and "threatened damage to or trespass on property" is a communication, by physical conduct or by declaration, of an intent to inflict harm on a person or a person's property by some unlawful act with a purpose to terrorize or coerce.

20 Sentences; Extended Term of Imprisonment. Amend RSA 651:6, I(f) to read as follows:

(f) Was substantially motivated to commit the crime because of hostility towards the victim's religion, race, creed, sexual orientation as defined in RSA 21:49, national origin [Ø], sex, ***or gender identity or expression as defined in RSA 21:51***;

21 Franchising and Regulation of Cable Television Systems; Rights of Individuals. Amend RSA 53-C:3-g to read as follows:

53-C:3-g Rights of Individuals. No cable television system operator shall deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, ***gender identity or expression, sexual orientation***, physical disability, or country of natural origin.

22 New Hampshire Mental Health Services System; Discrimination Prohibited; Eligibility for Services. Amend RSA 135-C:13 to read as follows:

135-C:13 Discrimination Prohibited; Eligibility for Services. Every severely mentally disabled person shall be eligible for admission to the state mental health services system, and no such person shall be denied services because of race, color or religion, sex, ***gender identity and expression***, or inability to pay. Eligible persons shall include formerly severely mentally disabled persons who without continued services would probably become severely mentally disabled again. Each client has a right to adequate and humane treatment provided in accordance with generally accepted clinical and professional standards. The treatment shall include such psychological, psychiatric, habilitative, rehabilitative, vocational and case management services which are necessary and appropriate to bring about an improvement, when possible, in the client's condition and which are available within the state mental health services system. If necessary services are not available, such service shall be documented through individual service plans. When services have been documented to be necessary but unavailable, each agency responsible for provision of such services shall notify the department of the need for them, and the department shall

utilize such information for budgetary planning purposes. The treatment may include housing and such other services as the department may elect to provide to severely mentally disabled persons. Eligibility for services in the mental health system for persons under 21 years of age shall be determined after consideration of the services provided under RSA 186-C, RSA 169-B, RSA 169-C, RSA 169-D, or any other law. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the eligibility of severely mentally disabled persons to receive state services and the service guarantees for clients in the state system.

23 New Hampshire Mental Health Services System; Fundamental Rights. Amend RSA 135-C:56, IV to read as follows:

IV. No person receiving mental health services shall be discriminated against in any manner because of race, color, sex, ***gender identity or expression, sexual orientation***, religion, national origin, age, disability, or degree of disability.

24 New Hampshire Employment Program and Family Assistance Program; Administrative Duties; Rulemaking. Amend RSA 167:83, III(e) to read as follows:

(e) To not be discriminated against because of gender, race, creed, color, sex, ***gender identity or expression, sexual orientation***, age, disability, political affiliation or beliefs, religion, or national origin.

25 Postsecondary Education Commission; Grants; Discrimination Prohibited. Amend RSA 188-D:35, II to read as follows:

II. No person shall be excluded from participation in, or denied the benefits of, this program because of race, color, age, sex, ***gender identity or expression, sexual orientation***, or national origin.

26 Loan Corporations; Administration of Loans; No Discrimination. Amend RSA 195-E:14, I to read as follows:

I. The foundation, a qualified educational institution and a loan corporation shall have the full power and authority and be subject to all rights, responsibilities and liabilities for the administration of a loan program and for the distribution and collection of loans to qualified students or their parents, including the determination of who is eligible to receive loans, the amounts of the loans, repayment schedules and interest rates to be charged; provided that the terms are in accordance with law and do not discriminate against any person on account of race, creed, national origin, sex, ***gender identity or expression, sexual orientation*** or age. In the case of student loans made to eligible students or the parents of such students who attend educational institutions that are not qualified educational institutions, the foundation shall have primary responsibility for the administration of such portion of the loan program and the servicing of such loans; provided, however, that this sentence shall not prohibit the foundation from contracting with another entity for assistance in such administration and servicing as agent for the foundation.

27 Housing Finance Authority; Definitions. Amend RSA 204-C:1, X to read as follows:

X. "Eligible persons and families" shall mean a person or persons, and families of 2 or more persons, irrespective of race, creed, national origin, [or] sex, ***gender identity or expression, or sexual orientation***, determined by the authority to require assistance under this chapter on account of insufficient personal or family income taking into consideration, without limitation, such factors as follows: (a) the amount of the total income of such persons and families available for housing needs; (b) the size of the family; (c) the cost and condition of housing facilities available; (d) the ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing; and (e) if appropriate, standards established for various federal programs determining eligibility based on income of such persons and families.

28 Dog and Horse Racing Employees, Elections. Amend RSA 273-C:10, VI(b) to read as follows:

(b) The board shall decertify any employee organization which is found in a judicial proceeding to discriminate with regard to membership, or with regard to the conditions thereof, because of age, sex, ***gender identity or expression, sexual orientation***, race, color, creed, marital status or national origin; or has systematically failed to allow its membership equal participation in the affairs of the employee organization.

29 Consumer Guaranty Contracts; Prohibited Acts and Terms. Amend RSA 415-C:7, I(h) to read as follows:

(h) Unfairly discriminate based solely on age, place or area of residence, race, color, creed, national origin, ancestry, marital or civil union status, lawful occupation including military service, gender, ***gender identity or expression, sexual orientation***, religion, or blindness or other disability.

30 Preferred Provider Agreements; Discrimination Prohibited. Amend RSA 420-C:5 to read as follows:

420-C:5 Discrimination Prohibited. No health care insurer shall discriminate against any provider on the basis of religion, race, color, national origin, age, sex, ***gender identity or expression, sexual orientation***, or marital status. Reasonable terms and conditions including, but not limited to, those based on economic or geographic considerations, certain affiliations, or professional privileges shall not be prohibited under this section.

31 Jurors; Prohibition of Discrimination. Amend RSA 500-A:4 to read as follows:

500-A:4 Prohibition of Discrimination. A citizen of this state shall not be excluded from jury service on account of race, color, religion, sex, ***gender identity or expression, sexual orientation***, national origin or economic status.

32 Effective Date. This act shall take effect 60 days after its passage.