

HB 1319 - VERSION ADOPTED BY BOTH BODIES

2018 SESSION

18-2009  
05/04

HOUSE BILL            **1319**

AN ACT                prohibiting discrimination based on gender identity.

SPONSORS:            Rep. Butler, Carr. 7; Rep. Stone, Rock. 1; Rep. Fothergill, Coos 1; Rep. Dean-Bailey, Rock. 32; Rep. Hennessey, Graf. 1; Rep. Crawford, Carr. 4; Rep. Bean, Rock. 21; Rep. Gargas, Hills. 27; Rep. McMahon, Rock. 7; Rep. Darrow, Graf. 17; Sen. Bradley, Dist 3; Sen. Innis, Dist 24; Sen. Reagan, Dist 17; Sen. Woodburn, Dist 1; Sen. Fuller Clark, Dist 21

COMMITTEE:          Judiciary

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ANALYSIS

This bill prohibits discrimination based on gender identity. The bill also defines gender identity.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT prohibiting discrimination based on gender identity.

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

1 1 Title and Purposes of This Chapter; Gender Identity. Amend RSA 354-A:1 to read as follows:  
2 354-A:1 Title and Purposes of Chapter. This chapter shall be known as the "Law Against  
3 Discrimination." It shall be deemed an exercise of the police power of the state for the protection of  
4 the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of  
5 the constitution of this state concerning civil rights. The general court hereby finds and declares  
6 that practices of discrimination against any of its inhabitants because of age, sex, **gender identity**,  
7 race, creed, color, marital status, familial status, physical or mental disability or national origin are  
8 a matter of state concern, that such discrimination not only threatens the rights and proper  
9 privileges of its inhabitants but menaces the institutions and foundation of a free democratic state  
10 and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.  
11 A state agency is hereby created with power to eliminate and prevent discrimination in  
12 employment, in places of public accommodation and in housing accommodations because of age, sex,  
13 **gender identity**, race, creed, color, marital status, familial status, physical or mental disability or  
14 national origin as herein provided; and the commission established hereunder is hereby given  
15 general jurisdiction and power for such purposes. In addition, the agencies and councils so created  
16 shall exercise their authority to assure that no person be discriminated against on account of sexual  
17 orientation.

18 2 New Paragraph; Gender Identity; Definition. Amend RSA 354-A:2 by inserting after  
19 paragraph XIV-d the following new paragraph.

20 XIV-e. "Gender identity" means a person's gender-related identity, appearance, or behavior,  
21 whether or not that gender-related identity, appearance, or behavior is different from that  
22 traditionally associated with the person's physiology or assigned sex at birth. Gender-related  
23 identity may be shown by providing evidence including, but not limited to, medical history, care or  
24 treatment of the gender-related identity, consistent and uniform assertion of the gender-related  
25 identity, or any other evidence that the gender-related identity is sincerely held as part of a person's  
26 core identity provided, however, that gender-related identity shall not be asserted for any improper  
27 purpose.

28 3 General Powers and Duties of the Commission; Gender Identity. Amend RSA 354-A:5, VIII-  
29 IX to read as follows:

30 VIII. To create such advisory agencies and conciliation councils, local, regional or statewide,  
31 as in its judgment will aid in effectuating the purpose of this chapter, and the commission may

1 empower them to study the problems of discrimination in all or specific fields of human  
2 relationships or in specific instances of discrimination, because of age, sex, **gender identity**, race,  
3 color, sexual orientation, marital status, familial status, or physical or mental disability, religious  
4 creed or national origin, in order to foster, through community effort or otherwise, good will,  
5 cooperation and conciliation among the groups and elements of the population of the state, and  
6 make recommendations to the commission for the development of policies and procedures in general  
7 and in specific instances, and for programs of formal and informal education which the commission  
8 may recommend to the appropriate state agency. Such advisory agencies and conciliation councils  
9 shall be composed of representative citizens, serving without pay, but with reimbursement for  
10 actual and necessary traveling expenses; and the commission may make provision for technical  
11 clerical assistance to such agencies and councils and for the expenses of such assistance.

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

16 4 Opportunity for Employment Without Discrimination a Civil Right; Gender Identity Added.  
17 Amend RSA 354-A:6 to read as follows:

18 354-A:6 Opportunity for Employment Without Discrimination a Civil Right. The opportunity to  
19 obtain employment without discrimination because of age, sex, **gender identity**, race, creed, color,  
20 marital status, physical or mental disability or national origin is hereby recognized and declared to  
21 be a civil right. In addition, no person shall be denied the benefits of the rights afforded by this  
22 section on account of that person's sexual orientation.

23 5 Unlawful Discriminatory Practices; Gender Identity Added. Amend RSA 354-A:7, I-III to  
24 read as follows:

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

31 II. For a labor organization, because of the age, sex, **gender identity**, race, color, marital  
32 status, physical or mental disability, creed, or national origin of any individual, to exclude from full  
33 membership rights or to expel from its membership such individual or to discriminate in any way  
34 against any of its members or against any employer or any individual employed by an employer,  
35 unless based upon a bona fide occupational qualification. In addition, no person shall be denied the  
36 benefit of the rights afforded by this paragraph on account of that person's sexual orientation.

37 III. For any employer or employment agency to print or circulate or to cause to be printed  
38 or circulated any statement, advertisement or publication, or to use any form of application for

1 employment or to make any inquiry or record in connection with employment, which expresses,  
2 directly or indirectly, any limitation, specification or discrimination as to age, sex, ***gender identity***,  
3 race, color, marital status, physical or mental disability, religious creed or national origin or any  
4 intent to make any such limitation, specification or discrimination in any way on the ground of age,  
5 sex, race, color, marital status, physical or mental disability, religious creed or national origin,  
6 unless based upon a bona fide occupational qualification; provided, however, that nothing in this  
7 chapter shall limit an employer after the offer of hire of an individual from inquiring into and  
8 keeping records of any existing or pre-existing physical or mental conditions. In addition, no person  
9 shall be denied the benefit of the rights afforded by this paragraph on account of that person's  
10 sexual orientation.

11 6 Equal Housing Opportunity Without Discrimination a Civil Right; Gender Identity Added.  
12 Amend RSA 354-A:8 to read as follows:

13 354-A:8 Equal Housing Opportunity Without Discrimination a Civil Right. The opportunity to  
14 obtain housing without discrimination because of age, sex, ***gender identity***, race, creed, color,  
15 marital status, familial status, physical or mental disability or national origin is hereby recognized  
16 and declared a civil right. In addition, no person shall be denied the benefit of the rights afforded  
17 by this section on account of that person's sexual orientation.

18 7 Unlawful Discriminatory Practices; Gender Identity. Amend RSA 354-A:10 to read as follows:

19 354-A:10 Unlawful Discriminatory Practices. It shall be an unlawful discriminatory practice  
20 for any person, being the owner, lessee, sublessee, assignee, managing agent or other person having  
21 the right to rent or lease a dwelling or commercial structure or being in the business of selling or  
22 renting dwellings or commercial structures:

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

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

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

1 sexual orientation.

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

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

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

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

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

25 8 Equal Access to Public Accommodations a Civil Right; Gender Identity. Amend RSA 354-A:16  
26 to read as follows:

27 354-A:16 Equal Access to Public Accommodations a Civil Right. The opportunity for every  
28 individual to have equal access to places of public accommodation without discrimination because of  
29 age, sex, ***gender identity***, race, creed, color, marital status, physical or mental disability or  
30 national origin is hereby recognized and declared to be a civil right. In addition, no person shall be  
31 denied the benefit of the rights afforded by this section on account of that person's sexual  
32 orientation.

33 9 Unlawful Discriminatory Practices in Public Accommodations; Gender Identity. Amend  
34 RSA 354-A:17 to read as follows:

35 354-A:17 Unlawful Discriminatory Practices in Public Accommodations. It shall be an unlawful  
36 discriminatory practice for any person, being the owner, lessee, proprietor, manager,  
37 superintendent, agent or employee of any place of public accommodation, because of the age, sex,  
38 ***gender identity***, race, creed, color, marital status, physical or mental disability or national origin

1 of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the  
2 accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish,  
3 circulate, issue, display, post or mail any written or printed communication, notice or advertisement  
4 to the effect that any of the accommodations, advantages, facilities and privileges of any such place  
5 shall be refused, withheld from or denied to any person on account of age, sex, race, creed, color,  
6 marital status, physical or mental disability or national origin; or that the patronage or custom  
7 thereat of any person belonging to or purporting to be of any particular age, sex, race, creed, color,  
8 marital status, physical or mental disability or national origin is unwelcome, objectionable or  
9 acceptable, desired or solicited. In addition, no person shall be denied the benefit of the rights  
10 afforded by this section on account of that person's sexual orientation.

11 10 Construction; Gender Identity. Amend RSA 354-A:25 to read as follows:

12 354-A:25 Construction. No provision of this chapter shall be deemed to supersede any other  
13 provision of law for the protection of minors or for the regulation of the employment of minors. The  
14 provisions of this chapter shall be construed liberally for the accomplishment of the purposes  
15 thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of the  
16 civil rights law or any other law of this state relating to discrimination because of age, sex, *gender*  
17 *identity*, race, creed, color, marital status, physical or mental disability or national origin; but, as to  
18 acts declared unlawful by this chapter the procedure provided in this chapter shall, while pending,  
19 be exclusive and the final determination therein shall exclude any other action, civil or criminal,  
20 based on the same grievance of the individual concerned. If such individual institutes any action  
21 based on such grievance without resorting to the procedure provided in this chapter, such person  
22 may not subsequently resort to the procedure in this chapter, provided, however, that nothing in  
23 this section shall prevent any individual from applying for or receiving unemployment  
24 compensation while the procedure provided for in this chapter is pending or after the procedure  
25 provided in this chapter has been concluded. This section shall not prevent the commission for  
26 human rights from investigating and acting upon a complaint of discrimination when the  
27 complainant has also filed a claim for unemployment compensation in which the issue of illegal  
28 discrimination is raised.

29 11 Effective Date. This act shall take effect 30 days after its passage.