

HB 478 - AS INTRODUCED

2017 SESSION

17-0240
08/05

HOUSE BILL **478**

AN ACT prohibiting discrimination based on gender identity.

SPONSORS: Rep. Butler, Carr. 7; Rep. Cushing, Rock. 21; Rep. King, Hills. 33; Rep. Shurtleff, Merr. 11; Rep. Kenison, Merr. 15; Rep. Berrien, Rock. 18; Sen. Feltes, Dist 15; Sen. Lasky, Dist 13; Sen. Bradley, Dist 3; Sen. Innis, Dist 24; Sen. Reagan, Dist 17

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill prohibits discrimination based on gender identity.

This bill also defines gender identity.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

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

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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 upon its passage.