

HB 1143 – AS AMENDED BY THE HOUSE

13Mar2014... 0471h

2014 SESSION

14-2296
05/01

HOUSE BILL **1143**

AN ACT relative to the New Hampshire Law Against Discrimination.

SPONSORS: Rep. L. Ober, Hills 37; Rep. Umberger, Carr 2; Rep. Rosenwald, Hills 30;
Sen. Carson, Dist 14; Sen. Reagan, Dist 17; Sen. Stiles, Dist 24

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill amends RSA 354-A, the state Law Against Discrimination to conform to the Fair Housing Act, 42 U.S.C. section 3601, et seq., as amended.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the New Hampshire Law Against Discrimination.

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

1 1 Change “Creed” or “Religious Creed” to “Religion.” Amend the following RSA provisions by
2 replacing “creed” or “religious creed” with “religion”: RSA 354-A:1; 354-A:5, VIII and IX; 354-A:6;
3 354-A:7, III; 354-A:8; 354-A:10,VIII; 354-A:16; 354-A:17; and 354-A:25.

4 2 Definition of Multiple Dwelling. Amend RSA 354-A:2, XI to read as follows:

5 XI. “Multiple dwelling” means [2] 4 or more dwellings, as defined in paragraph V, occupied
6 by families living independently of each other.

7 3 Definition of Person. Amend RSA 354-A:2, XIII to read as follows:

8 XIII. “Person” includes one or more individuals, partnerships, associations, corporations,
9 ***unincorporated organizations***, legal representatives, mutual companies, joint-stock companies,
10 ***labor organizations***, trusts, ***trustees, fiduciaries***, trustees in bankruptcy, receivers, and the
11 state and all political subdivisions, boards, and commissions thereof.

12 4 Definition of Reasonable Accommodation. Amend RSA 354-A:2, XIV-b to read as follows:

13 XIV-b. “Reasonable accommodation” may include, ***but not be limited to:***

14 (a) Making existing facilities used by employees readily accessible to and usable by
15 individuals with disabilities.

16 (b) Job restructuring, part-time or modified work schedules, reassignment to a vacant
17 position, acquisition or modification of equipment or devices, appropriate adjustment or
18 modifications of examinations, training materials or policies, the provision of qualified readers or
19 interpreters, and other similar accommodations for individuals with disabilities.

20 (c) ***Making the use and equal enjoyment of dwellings, facilities, and services***
21 ***associated with housing accessible to and usable by individuals with disabilities by***
22 ***modifying rules, policies, practices, or services in housing.***

23 (d) ***Making the use and equal enjoyment of public accommodations, as defined***
24 ***in paragraph XIV, accessible to and usable by individuals with disabilities by modifying***
25 ***policies, practices, or services to provide such access.***

26 5 Power to Initiate Complaints. Amend RSA 354-A:5, VI to read as follows:

27 VI. To ***initiate***, receive, investigate, and pass upon complaints alleging violations of this
28 chapter.

29 6 Unlawful Discriminatory Practices. Amend the introductory paragraph of RSA 354-A:10 to
30 read as follows:

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1 354-A:10 Unlawful Discriminatory Practices. It shall be an unlawful discriminatory practice for
2 any person~~[, being the owner, lessee, sublessee, assignee, managing agent or other person having the~~
3 ~~right to rent or lease a dwelling or commercial structure or being in the business of selling or renting~~
4 ~~dwellings or commercial structures]~~:

5 7 Fair Housing Exemptions. Amend RSA 354-A:13, I(b) and (c) to read as follows:

6 (b) To the rental of ~~[a housing accommodation]~~ **living quarters** in a building which
7 contains ~~[housing accommodations]~~ **living quarters** for not more than 3 families living
8 independently of each other, if the owner ~~[or members of his family reside in one of such housing~~
9 ~~accommodations]~~ **resides in one of the living quarters**; or

10 (c) To the rental of a room or rooms in a ~~[housing accommodation]~~ **dwelling** with not
11 more than 5 such rooms, if ~~[such rental is by the occupant of the housing accommodation or by the~~
12 ~~owner of the housing accommodation and the owner or members of the owner's family reside in such~~
13 ~~housing accommodation]~~ **one room is occupied by the owner of the dwelling**.

14 8 Fair Housing; Exemptions; Reference Change. Amend RSA 354-A:13, II and III to read as
15 follows:

16 II. Nothing in this ~~[chapter]~~ **subdivision** shall prohibit a religious organization, association,
17 or society, or any nonprofit institution or organization operated, supervised or controlled by or in
18 conjunction with a religious organization, association, or society, from limiting the sale, rental or
19 occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of
20 the same religion, or from giving preference to such persons, unless membership in such religion is
21 restricted on account of race, color, or national origin.

22 III. Nothing in this ~~[chapter]~~ **subdivision** shall prohibit a private club not in fact open to
23 the public, which as an incident to its primary purpose or purposes provides lodging which it owns or
24 operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings
25 to its members or from giving preference to its members.

26 9 Housing for Older Persons. Amend RSA 354-A:15, IV-VI to read as follows:

27 IV. ~~[In determining whether housing qualifies as]~~ Housing for persons 55 years or older~~[, the~~
28 ~~commission shall adopt rules which require at least the following factors]~~ **shall meet the following**
29 **criteria:**

30 (a) The existence of significant facilities and services specifically designed to meet the
31 physical or social needs of older persons, or if the provision of such facilities and service is not
32 practicable, that such housing is necessary to provide important housing opportunities for older
33 persons;

34 (b) ~~[That]~~ At least 80 percent of the units are occupied by at least one person 55 years of
35 age or older per unit; and

36 (c) The publication of, and adherence to, policies and procedures which demonstrate an
37 intent by the owner or manager to provide housing for persons 55 years of age or older.

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1 V. Housing shall not fail to meet the requirements for housing for older persons by reason of:

2 (a) Persons residing in such housing as of September 13, 1988, who do not meet the age
3 requirements of ~~[paragraph]~~ **RSA 354-A:15**, II or III, provided, that new occupants of such housing
4 meet the age requirements of ~~[paragraph]~~ **RSA 354-A:15**, II or III.

5 (b) Unoccupied units, provided, that such units are reserved for occupancy by persons
6 who meet the age requirements of ~~[paragraph]~~ **RSA 354-A:15**, II or III.

7 VI. Any rule concerning the exemption available under this section shall be consistent with
8 federal law. In adopting such rules, the commission shall be guided by applicable federal regulations
9 and interpretations concerning housing for older persons ~~[under 42 U.S.C. section 3607(b)]~~.

10 10 Public Accommodations; Exemption for Religious Organizations. Amend the subdivision
11 heading preceding RSA 354-A:18 and RSA 354-A:18 to read as follows:

12 ~~[Exemption]~~

13 354-A:18 Exemption for Religious Organizations. Nothing contained in this ~~[chapter]~~
14 **subdivision** shall be construed to bar any religious or denominational institution or organization, or
15 any organization operated for charitable or educational purposes, which is operated, supervised or
16 controlled by or in connection with a religious organization, from limiting admission to or giving
17 preference to persons of the same religion or denomination or from making such selection as is
18 calculated by such organization to promote the religious principles for which it is established or
19 maintained.

20 11 Retaliation and Required Records; Gender Neutral Reference Added. Amend RSA 354-A:19
21 to read as follows:

22 354-A:19 Retaliation and Required Records. It shall be an unlawful discriminatory practice for
23 any person engaged in any activity to which this chapter applies to discharge, expel, or otherwise
24 retaliate or discriminate against any person because he **or she** has opposed any practices forbidden
25 under this chapter or because he has filed a complaint, testified or assisted in any proceeding under
26 this chapter.

27 12 Procedure on Complaints. RSA 354-A:21 is repealed and reenacted to read as follows:

28 354-A:21 Procedure on Complaints.

29 I.(a) Any person claiming to be aggrieved by an unlawful discriminatory practice may make,
30 sign, and file with the commission a verified complaint in writing which shall state the name and
31 address of the respondent alleged to have committed the unlawful discriminatory practice
32 complained of and which shall set forth the particulars thereof and contain such other information as
33 may be required by the commission. Any person claiming to be aggrieved by unlawful housing
34 discrimination is exempt from verifying the complaint. The attorney general or one of the
35 commissioners may, in like manner, make, sign, and file such complaint.

36 (b) In connection with the filing of such complaint, the commission is authorized to
37 receive, investigate, take proof, issue subpoenas, administer oaths, and decide upon complaints of

1 employment, housing, and public accommodation discrimination. The attorney general is authorized
2 to take proof, issue subpoenas, and administer oaths in the manner provided in the civil practice law
3 and rules.

4 II. Housing Discrimination Procedure on Complaints.

5 (a) In complaints filed based on housing discrimination, the commission shall send the
6 aggrieved party notice acknowledging receipt of the complaint together with a notice of choice of
7 forums. The commission shall serve notice of filing of the complaint to the respondent, including a
8 copy of the complaint and notice of procedural rights and duties. Proceedings at the commission
9 shall begin within 30 days of receipt of the complaint. In addition, investigation of the housing
10 discrimination complaint and a determination of reasonable cause shall be completed within 100
11 days after the filing of the complaint. If the commission is unable to complete the investigation
12 and/or make a determination of cause within 100 days, the commission shall notify the parties in
13 writing of the reason. If the investigating commissioner determines that reasonable cause exists
14 that a discriminatory housing practice has occurred or is about to occur, the investigating
15 commissioner shall immediately issue a charge on behalf of the aggrieved party. If the investigating
16 commissioner determines that no reasonable cause exists, the complaint may be dismissed subject to
17 appeal in the superior court pursuant to subparagraph III(c). Each dismissal shall be subject to
18 public disclosure. No charge may be issued if a trial of a civil action has begun. A final
19 administrative disposition of a housing discrimination complaint shall be made within one year of
20 the date of filing unless it is impractical to do so. If the commission cannot make a final disposition
21 within one year, it shall notify the parties in writing of the reason.

22 (b)(1) Any party alleging to be aggrieved by housing discrimination, upon issuance of a
23 charge by the investigating commissioner, may elect to have the claims asserted in a civil action in
24 the county in which the violation is alleged to have occurred in lieu of a public administrative
25 hearing before the commission. The election shall be made not later than 20 days after receipt of
26 service of the charge. The person making such election shall give notice to the commission and all
27 other complainants and respondents to whom the charge relates.

28 (2) If a civil action is not elected, the commission shall issue written notice, requiring
29 the respondent to attend a public hearing before 3 members of the commission designated by the
30 chair, none of whom were the investigating commissioner. The hearing shall be scheduled not later
31 than 120 days after the charge issues. The location of the hearing shall be in the county in which the
32 discriminatory practice is alleged to have occurred or is about to occur. All parties shall have a right
33 to obtain issuance of subpoenas, appear in person, be represented by counsel, present evidence,
34 cross-examine witnesses, and create a record. If the aggrieved party cannot obtain legal counsel for
35 a public hearing before the commission, the commission shall provide legal counsel for him or her
36 subject to the rules of the state of New Hampshire for appointment of counsel. If the commission
37 cannot schedule a public hearing within 120 days after the charge issues, written notice to the

1 parties explaining why it is impractical to do so shall be provided. The case in support of the charge
2 may be presented before the commissioners by the aggrieved party or his or her representative. The
3 investigating commissioner who issued the charge shall not participate in the hearing or deliberation
4 of the decision. The respondent shall appear in person with or without a representative. The
5 commission or the complainant shall have the power reasonably and fairly to amend any complaint,
6 and the respondent shall have like power to amend his or her answer. The commissioners shall not
7 be bound by the strict rules of evidence prevalent in courts of law or equity. Testimony taken shall
8 be under oath and transcribed at the request of any party. The cost of transcription shall be borne
9 by the party requesting the transcript unless the party is indigent, in which case the commission
10 shall pay the cost upon request for a waiver and proof of indigency.

11 (3) If the commission finds in favor of the aggrieved party, it may order appropriate
12 relief, including actual damages suffered by the aggrieved person, injunctive and other equitable
13 relief, and reasonable attorney fees. If counsel for the aggrieved party was appointed in accordance
14 with the rules of the state of New Hampshire for the appointment of counsel, any award of attorney
15 fees shall be deposited to the general fund. The civil penalties set forth in the federal Fair Housing
16 Act, as amended in 1988, 42 U.S.C. section 3601, et seq., and any future amendments to the act shall
17 apply to housing discrimination public hearings except that if the acts of housing discrimination that
18 are the object of the charge are committed by the same natural person who has been previously
19 adjudged to have committed acts constituting a discriminatory housing practice, then the civil
20 penalties may be imposed without regard to the period of time within which any discriminatory
21 housing practice occurred.

22 (4) The commission hearing panel shall issue written findings of fact and rulings of
23 law to the parties within 60 days of the end of the hearing. If the commission is unable to issue
24 findings and rulings within 60 days, written notice to the parties explaining why it is impractical to
25 issue the decision shall be provided.

26 (c) The commission may bring a civil action in the name of the commission to enforce the
27 New Hampshire fair housing act if the facts as alleged also violate the Fair Housing Act, 42 U.S.C.
28 section 3601, et seq. If the commission determines it will bring a civil action, the parties shall be so
29 notified. If the commission determines not to file a civil action, it shall close the case and inform the
30 parties of the complainant's rights in the matter.

31 (d) In complaints filed based on housing discrimination, from the time a complaint is
32 filed, and ending with a filing of a charge or a dismissal, the commission shall engage in conciliation
33 of the complaint with the parties. Any conciliation agreement reached shall be between respondent
34 and complainant and will be approved by the commission. Such agreements shall be made public
35 unless the complainant and respondent agree otherwise and the commission determines that
36 disclosure of the agreement is not required to further the overall statutory purpose.

37 III. Employment and Public Accommodations Procedure on Complaints.

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1 (a) After the filing of any employment or public accommodations complaint, the
2 respondent shall be promptly served with a copy of the complaint and a date by which to file a
3 response and any other information required for investigative purposes. A copy of the notice of
4 service of the complaint shall be provided to the complainant. The commission shall make prompt
5 investigation in connection with the filing of a complaint.

6 (b) In complaints filed based on employment discrimination and public accommodations
7 discrimination, from the time a complaint is filed and ending with a dismissal, the commission shall
8 assist and provide the parties opportunities to voluntarily resolve the complaint. If an investigating
9 commissioner determines that probable cause exists for crediting the allegations of an employment
10 discrimination or public accommodations discrimination complaint, the commissioner, or his or her
11 designee, shall immediately endeavor to eliminate the unlawful discriminatory practice complained
12 of by conference, conciliation, and persuasion. Any conciliation agreement reached with the
13 assistance of the commissioner shall be between the respondent and complainant, with the
14 commission signing on as a party. Such agreements shall be made public unless the complainant
15 and respondent agree otherwise and the commission determines that disclosure of the agreement is
16 not required to further the overall statutory purpose.

17 (c) If the investigating commissioner finds no probable cause to credit the allegations in
18 the complaint, the complaint shall be dismissed, subject to a right of appeal to superior court within
19 30 days of the date of notice of dismissal. To prevail on appeal in superior court, the moving party
20 shall establish that the commission's decision is unlawful or unreasonable by a clear preponderance
21 of the evidence. The findings of the investigating commissioner upon questions of fact shall be
22 upheld as long as the record contains credible evidence to support them. If the court reverses the
23 probable cause finding of the investigating commissioner, the court shall remand the case for further
24 proceedings in accordance with this section, unless the complainant or respondent elects to proceed
25 with a hearing in superior court pursuant to RSA 354-A:21-a.

26 (d)(1) In case of failure to eliminate an unlawful discriminatory practice complained of,
27 or in advance thereof, if, in the judgment of the commissioner making the investigation,
28 circumstances so warrant, the commissioner shall cause to be issued and served in the name of the
29 commission, a written notice, together with a copy of such complaint as the same may have been
30 amended, requiring the respondent named in such complaint to answer at a hearing before 3
31 members of the commission, designated by the chair and sitting as the commission, at a time and
32 place to be fixed by the chair and specified in such notice. The place of any such hearing shall be the
33 office of the commission or such other place as may be designated by the commission.

34 (2) The case in support of the complainant may be presented before the commission
35 by the complainant or complainant's representative. The commissioner who shall have previously
36 made the investigation and caused the notice to be issued shall not participate in the hearing except
37 as a witness, nor shall he or she participate in the subsequent deliberation of the commission in such

1 case. Any prior endeavors at conciliation shall not be received in evidence. The respondent shall
2 appear at the hearing in person or by representative, with or without counsel, and submit evidence.
3 The commission, the complainant, or the complainant's representative shall have the power
4 reasonably and fairly to amend any complaint, and the respondent shall have like power to amend
5 its answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of
6 law or equity when conducting public hearings. The testimony taken at the hearing shall be under
7 oath and transcribed at the request of any party. The cost of transcription shall be borne by the
8 party requesting the transcript unless the party is indigent, in which case the commission shall pay
9 the cost upon that party's request for a waiver and proof of indigency.

10 (3) If, upon all the evidence at the hearing, the commission finds by a preponderance
11 of evidence that the respondent has engaged in an unlawful discriminatory practice under RSA 354-
12 A:7 or RSA 354-A:17, the commission shall make findings of fact and rulings of law in writing to the
13 parties which shall grant such relief as the commission panel deems just and equitable, including
14 but not limited to: requiring such respondent to cease and desist from such unlawful discriminatory
15 practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or
16 upgrading of employees, with or without back pay, restoration to membership in any respondent
17 labor organization, or the extension of full, equal and unsegregated accommodations, advantages,
18 facilities and privileges to all persons, as in the judgment of the commission, will effectuate the
19 purpose of this chapter and including a requirement for report of the manner of compliance. Such
20 cease and desist orders for affirmative relief may be issued to operate prospectively. The commission
21 may also order compensatory damages to be paid to the complainant by the respondent, shall order
22 reasonable attorney fees to the complainant, and in order to vindicate the public interest, order the
23 respondent to pay an administrative fine. The administrative fine shall be deposited in the general
24 fund. The amount of the administrative fine shall not exceed:

25 (A) Ten thousand dollars if the respondent has not been adjudged to have
26 committed any prior discriminatory practice in any administrative hearing or civil action.

27 (B) Fifty thousand dollars if the respondent has been adjudged to have
28 committed a prior discriminatory practice in any administrative hearing or civil action and the
29 adjudication was made no more than 5 years prior to the date of filing the current charge.

30 (C) Seventy five thousand dollars if the respondent has been adjudged to have
31 committed 2 or more discriminatory practices in any administrative hearings or civil action and the
32 adjudications were made during the 7-year period preceding the date of filing of the charge.

33 (e) In employment discrimination based public hearings, when issuing an order
34 awarding back pay, the commission shall calculate the back pay award by determining the amount
35 the complainant would have earned but for the unlawful discriminatory practice. The commission
36 shall subtract from that amount any unemployment compensation or interim earnings received by
37 the complainant for the time period covered by the back pay award.

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1 (f) If upon all the evidence the commission finds that a respondent has not engaged in
2 any unlawful discriminatory practice, the commission shall make findings of fact and rulings of law
3 in writing to the parties dismissing the complaint. All public hearing decisions of the commission
4 shall be made public. A copy of the commission's public hearing decision shall be delivered in all
5 cases to the attorney general, and such other public officers as the commission deems relevant or
6 proper. The commission shall establish rules of practice to govern, expedite, and effectuate the
7 foregoing procedure and its own actions.

8 (g) Any complaint relative to employment or public accommodation discrimination filed
9 pursuant to this paragraph shall be filed within 180 days after the alleged act of discrimination.
10 Any complaint filed pursuant to this paragraph by the attorney general or one of the commissioners
11 shall be so filed within 180 days after the alleged unlawful discriminatory practice.

12 (h) In administering complaints filed under this paragraph, the commission shall be
13 exempt from the provisions of RSA 541-A:29, II, but shall close each case or commence adjudicative
14 proceedings on such case under this section within 24 months after the filing date of the complaint.

15 13 Choice of Forum. Amend RSA 354-A:21-a to read as follows:

16 354-A:21-a Choice of Forum.

17 I. Any party alleging to be aggrieved by any **employment discrimination or public**
18 **accommodations discrimination** practice made unlawful under this chapter may, at the
19 expiration of 180 days after the timely filing of a complaint with the commission, or sooner if the
20 commission assents in writing, but not later than 3 years after the alleged unlawful practice
21 occurred, bring a civil action for damages or injunctive relief or both, in the superior court for the
22 county in which the alleged unlawful practice occurred or in the county of residence of the party.
23 **The waiting period described in this paragraph shall not apply to a party aggrieved by**
24 **housing discrimination.**

25 II. Any party alleged to have committed any practice made unlawful under this chapter
26 may, in any case in which a determination of probable cause has been made by the investigating
27 commissioner, remove said complaint to superior court for trial. A court in cases so removed may
28 award all damages and relief which could have been awarded by the commission, except that in lieu
29 of an administrative fine, enhanced compensatory damages may be awarded when the court finds
30 the respondent's discriminatory conduct to have been taken with willful or reckless disregard of the
31 charging party's rights under this chapter. A superior court trial shall not be available to any party
32 if a hearing before the commission has begun or has concluded pursuant to RSA 354-A:21, II(b) **or**
33 **RSA 354-A:21, III(d)**, or to a complainant whose charge has been dismissed as lacking in probable
34 cause who has not prevailed on an appeal to superior court pursuant to RSA 354-A:21, ~~III(c)~~ **III(c)**.
35 In superior court, either party is entitled to a trial by jury on any issue of fact in an action for
36 damages regardless of whether the complaining party seeks affirmative relief.

37 ~~III.~~ **III.** The ~~charging party~~ **complainant** shall notify the commission of the filing of any

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1 superior *or federal* court action, and the respondent shall notify the commission of the removal to
2 superior court after a finding of probable cause *in accordance with commission rules*. After such
3 notice, the commission shall dismiss the complaint without prejudice. A party electing to file a civil
4 action with the superior court under ~~[paragraph I]~~ *this section*, shall be barred from bringing any
5 subsequent complaint before the commission based upon the same alleged unlawful discriminatory
6 practice.

7 ~~[III. The commission may, after a finding of probable cause, bring suit in superior court at
8 its own expense on behalf of an aggrieved person in housing discrimination cases.]~~

9 14 Criminal Penalty. Amend RSA 354-A:24 to read as follows:

10 354-A:24 Criminal Penalty. Any person~~[- employer, labor organization or employment agency,]~~
11 *as defined in RSA 354-A:2, XIII*, who or which shall willfully resist, prevent, impede or interfere
12 with the commission or any of its members or representatives in the performance of duty under RSA
13 354-A, or shall willfully violate an order of the commission, shall be guilty of a misdemeanor if [~~a~~
14 ~~natural person,~~] *an individual* or guilty of a felony if any other person. Procedure for the review of
15 the order shall not be deemed to be such willful conduct.

16 15 Reference Change. Amend RSA 354-A:3, II to read as follows:

17 II. Any member chosen to fill a vacancy occurring otherwise than by expiration of term shall
18 be appointed for the unexpired term of the member who is to be succeeded. Four members of the
19 commission shall constitute a quorum for the purpose of conducting the commission's business, with
20 the exception of hearings conducted pursuant to RSA 354-A:21~~[- II(b)],~~ *III(d)*. A vacancy in the
21 commission shall not impair the right of the remaining members to exercise all the powers of the
22 commission. Each member of the commission shall be entitled to expenses actually and necessarily
23 incurred by the member in the performance of the member's duties.

24 16 Effective Date. This act shall take effect January 1, 2015.