

HB 396 - AS AMENDED BY THE HOUSE

4Jan2024... 0441h

2023 SESSION

23-0647  
05/08

HOUSE BILL

**396**

AN ACT            permitting classification of individuals based on biological sex under certain limited circumstances.

SPONSORS:       Rep. Kofalt, Hills. 32; Rep. A. Lekas, Hills. 38; Rep. Aron, Sull. 4; Rep. Prudhomme-O'Brien, Rock. 13; Rep. Sirois, Hills. 32; Rep. M. Pearson, Rock. 34; Rep. Notter, Hills. 12; Rep. Ammon, Hills. 42; Rep. Seidel, Hills. 29; Rep. DeSimone, Rock. 18; Sen. Avard, Dist 12

COMMITTEE:     Judiciary

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AMENDED ANALYSIS

This bill permits classification of individuals based on biological sex in lavatory facilities and locker rooms, sporting competitions, and detention facilities.

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                     Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    permitting classification of individuals based on biological sex under certain limited circumstances.

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

1            1    State Commission for Human Rights; Law Against Discrimination; Purpose and Scope.  
2    Amend RSA 354-A:1 to read as follows:

3            354-A:1    Title and Purposes of Chapter.

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

19            ***II.***    ***The general court also finds that, notwithstanding New Hampshire's***  
20   ***fundamental commitment to treat all persons without discrimination and with equal***  
21   ***dignity and respect, which commitment the legislature fully accepts and strongly endorses,***  
22   ***there are certain limited circumstances in which classification of persons based on***  
23   ***biological sex is proper because such classification serves the compelling state interests of***  
24   ***protecting the privacy rights and physical safety of such persons and others. The***  
25   ***legislature finds that permitting classification of persons based upon biological sex serves***  
26   ***this compelling state interest in the 3 circumstances described in RSA 354-A:25-a.***

27            2    New Section; Law Against Discrimination; Classification of Persons Based Upon Biological  
28   Sex. Amend RSA 354-A by adding after section 25 the following new section:

29            354-A:25-a    Classification of Persons Based Upon Biological Sex. Notwithstanding RSA 354-A:2,  
30   XIV-e or any other provision of this chapter or any other law or regulation, it shall not constitute

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1 unlawful discrimination based on sexual or gender identity for any person or organization, public or  
2 private, to classify based on biological sex with respect to the following matters:

3 I. In the construction, maintenance, operation, and use of lavatory facilities or locker rooms  
4 designed for usage by multiple persons at the same time, even if such facilities have individual  
5 urinals, stalls, or similar apparatus.

6 II. In athletic or sporting events or competitions in a sport or similar activity in which  
7 physical strength, speed, or endurance is generally recognized to give an advantage to biological  
8 males.

9 III. In the operation, maintenance, and use of facilities designed for usage as prisons, houses  
10 of correction, juvenile detention or commitment centers, mental health hospitals or treatment  
11 centers and like facilities to which persons may be committed involuntarily.

12 3 Effective Date. This act shall take effect 60 days after its passage.