

Bill as Introduced

HB 415 - AS INTRODUCED

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 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 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 1 New Section; Statutory Construction; Gender Identity and Expression. Amend RSA 21 by
2 inserting after section 50 the following new section:

3 21:51 Gender Identity and Expression. "Gender identity or expression" means a gender-related
4 identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned
5 sex at birth.

6 2 State Commission for Human Rights; Title and Purposes of Chapter. Amend RSA 354-A:1 to
7 read as follows:

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

23 3 New Paragraph; State Commission for Human Rights. Amend RSA 354-A:2 by inserting after
24 paragraph XIV-d the following new paragraph:

25 XIV-e. "Gender identity or expression" means a gender-related identity, appearance,
26 expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

27 4 State Commission for Human Rights; General Powers and Duties of the Commission. Amend
28 RSA 354-A:5, VIII to read as follows:

29 VIII. To create such advisory agencies and conciliation councils, local, regional or statewide,
30 as in its judgment will aid in effectuating the purpose of this chapter, and the commission may
31 empower them to study the problems of discrimination in all or specific fields of human relationships

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

11 5 State Commission for Human Rights; General Powers and Duties of the Commission. Amend
12 RSA 354-A:5, IX to read as follows:

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

17 6 State Commission for Human Rights; Opportunity for Employment Without Discrimination a
18 Civil Right. Amend RSA 354-A:6 to read as follows:

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

24 7 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-
25 A:7, I to read as follows:

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

32 8 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-
33 A:7, II to read as follows:

34 II. For a labor organization, because of the age, sex, *gender identity or expression*, race,
35 color, marital status, physical or mental disability, creed, or national origin of any individual, to
36 exclude from full membership rights or to expel from its membership such individual or to
37 discriminate in any way against any of its members or against any employer or any individual

1 employed by an employer, unless based upon a bona fide occupational qualification. In addition, no
2 person shall be denied the benefit of the rights afforded by this paragraph on account of that person's
3 sexual orientation.

4 9 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-
5 A:7, III to read as follows:

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

18 10 State Commission for Human Rights; Equal Housing Opportunity Without Discrimination a
19 Civil Right. Amend RSA 354-A:8 to read as follows:

20 354-A:8 Equal Housing Opportunity Without Discrimination a Civil Right. The opportunity to
21 obtain housing without discrimination because of age, sex, *gender identity or expression*, race,
22 creed, color, marital status, familial status, physical or mental disability or national origin is hereby
23 recognized and declared a civil right. In addition, no person shall be denied the benefit of the rights
24 afforded by this section on account of that person's sexual orientation.

25 11 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-
26 A:10 to read as follows:

27 354-A:10 Unlawful Discriminatory Practices. It shall be an unlawful discriminatory practice for
28 any person, being the owner, lessee, sublessee, assignee, managing agent or other person having the
29 right to rent or lease a dwelling or commercial structure or being in the business of selling or renting
30 dwellings or commercial structures:

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

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

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

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

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

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

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

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

1 12 State Commission for Human Rights; Equal Access to Public Accommodations a Civil Right.
2 Amend RSA 354-A:16 to read as follows:

3 354-A:16 Equal Access to Public Accommodations a Civil Right. The opportunity for every
4 individual to have equal access to places of public accommodation without discrimination because of
5 age, sex, *gender identity or expression*, race, creed, color, marital status, physical or mental
6 disability or national origin is hereby recognized and declared to be a civil right. In addition, no
7 person shall be denied the benefit of the rights afforded by this section on account of that person's
8 sexual orientation.

9 13 State Commission for Human Rights; Unlawful Discriminatory Practices in Public
10 Accommodations. Amend RSA 354-A:17 to read as follows:

11 354-A:17 Unlawful Discriminatory Practices in Public Accommodations. It shall be an unlawful
12 discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent,
13 agent or employee of any place of public accommodation, because of the age, sex, *gender identity or*
14 *expression*, race, creed, color, marital status, physical or mental disability or national origin of any
15 person, directly or indirectly, to refuse, withhold from or deny to such person any of the
16 accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish,
17 circulate, issue, display, post or mail any written or printed communication, notice or advertisement
18 to the effect that any of the accommodations, advantages, facilities and privileges of any such place
19 shall be refused, withheld from or denied to any person on account of age, sex, *gender identity or*
20 *expression*, race, creed, color, marital status, physical or mental disability or national origin; or that
21 the patronage or custom thereof of any person belonging to or purporting to be of any particular age,
22 sex, *gender identity or expression*, race, creed, color, marital status, physical or mental disability
23 or national origin is unwelcome, objectionable or acceptable, desired or solicited. In addition, no
24 person shall be denied the benefit of the rights afforded by this section on account of that person's
25 sexual orientation.

26 14 Department of Administrative Services; Division of Personnel. Amend RSA 21-I:42, XVI to
27 read as follows:

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

33 15 Department of Administrative Services; Classified Employees; Prohibitions; Penalty. Amend
34 RSA 21-I:52, I to read as follows:

35 I. No person shall be appointed or promoted to, or demoted or dismissed from, any position
36 in the classified service, or in any way favored or discriminated against with respect to employment
37 in the classified service because of the person's political opinions, religious beliefs or affiliations, age,

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

22 16 Department of Administrative Services; Classified Employees; Appeals. Amend RSA 21-I:58,
 23 I to read as follows:

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

1 period, except to the extent that the number of hours worked in such casual employment increases
2 during the period. In all cases, the personnel appeals board may reinstate an employee or otherwise
3 change or modify any order of the appointing authority, or make such other order as it may deem just.

4 17 Residential Care and Health Facility; Patients' Bill of Rights. Amend RSA 151:21, XVI to
5 read as follows:

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

9 18 Residential Care and Health Facility; Patients' Bill of Rights. Amend RSA 151:21-b, II(b) to
10 read as follows:

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

14 19 Civil Rights Act; Enforcement. Amend RSA 354-B:1, I to read as follows:

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

24 20 Sentences; Extended Term of Imprisonment. Amend RSA 651:6, I(f) to read as follows:

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

28 21 Franchising and Regulation of Cable Television Systems; Rights of Individuals. Amend
29 RSA 53-C:3-g to read as follows:

30 53-C:3-g Rights of Individuals. No cable television system operator shall deny service, deny
31 access, or otherwise discriminate against subscribers, channel users, or any other citizens on the
32 basis of age, race, religion, sex, *gender identity or expression*, *sexual orientation*, physical
33 disability, or country of natural origin.

34 22 New Hampshire Mental Health Services System; Discrimination Prohibited; Eligibility for
35 Services. Amend RSA 135-C:13 to read as follows:

36 135-C:13 Discrimination Prohibited; Eligibility for Services. Every severely mentally disabled
37 person shall be eligible for admission to the state mental health services system, and no such person

1 shall be denied services because of race, color or religion, sex, *gender identity and expression*, or
 2 inability to pay. Eligible persons shall include formerly severely mentally disabled persons who
 3 without continued services would probably become severely mentally disabled again. Each client has
 4 a right to adequate and humane treatment provided in accordance with generally accepted clinical
 5 and professional standards. The treatment shall include such psychological, psychiatric,
 6 habilitative, rehabilitative, vocational and case management services which are necessary and
 7 appropriate to bring about an improvement, when possible, in the client's condition and which are
 8 available within the state mental health services system. If necessary services are not available,
 9 such service shall be documented through individual service plans. When services have been
 10 documented to be necessary but unavailable, each agency responsible for provision of such services
 11 shall notify the department of the need for them, and the department shall utilize such information
 12 for budgetary planning purposes. The treatment may include housing and such other services as the
 13 department may elect to provide to severely mentally disabled persons. Eligibility for services in the
 14 mental health system for persons under 21 years of age shall be determined after consideration of
 15 the services provided under RSA 186-C, RSA 169-B, RSA 169-C, RSA 169-D, or any other law. The
 16 commissioner shall adopt rules, pursuant to RSA 541-A, relative to the eligibility of severely
 17 mentally disabled persons to receive state services and the service guarantees for clients in the state
 18 system.

19 23 New Hampshire Mental Health Services System; Fundamental Rights. Amend RSA 135-
 20 C:56, IV to read as follows:

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

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

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

29 25 Postsecondary Education Commission; Grants; Discrimination Prohibited. Amend RSA 188-
 30 D:35, II to read as follows:

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

34 26 Loan Corporations; Administration of Loans; No Discrimination. Amend RSA 195-E:14, I to
 35 read as follows:

36 I. The foundation, a qualified educational institution and a loan corporation shall have the
 37 full power and authority and be subject to all rights, responsibilities and liabilities for the

1 administration of a loan program and for the distribution and collection of loans to qualified students
 2 or their parents, including the determination of who is eligible to receive loans, the amounts of the
 3 loans, repayment schedules and interest rates to be charged; provided that the terms are in
 4 accordance with law and do not discriminate against any person on account of race, creed, national
 5 origin, sex, *gender identity or expression, sexual orientation* or age. In the case of student
 6 loans made to eligible students or the parents of such students who attend educational institutions
 7 that are not qualified educational institutions, the foundation shall have primary responsibility for
 8 the administration of such portion of the loan program and the servicing of such loans; provided,
 9 however, that this sentence shall not prohibit the foundation from contracting with another entity
 10 for assistance in such administration and servicing as agent for the foundation.

11 27 Housing Finance Authority; Definitions. Amend RSA 204-C:1, X to read as follows:

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

22 28 Dog and Horse Racing Employees, Elections. Amend RSA 273-C:10, VI(b) to read as follows:

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

28 29 Consumer Guaranty Contracts; Prohibited Acts and Terms. Amend RSA 415-C:7, I(h) to
 29 read as follows:

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

34 30 Preferred Provider Agreements; Discrimination Prohibited. Amend RSA 420-C:5 to read as
 35 follows:

36 420-C:5 Discrimination Prohibited. No health care insurer shall discriminate against any
 37 provider on the basis of religion, race, color, national origin, age, sex, *gender identity or*

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1 *expression, sexual orientation*, or marital status. Reasonable terms and conditions including, but
2 not limited to, those based on economic or geographic considerations, certain affiliations, or
3 professional privileges shall not be prohibited under this section.

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

5 500-A:4 Prohibition of Discrimination. A citizen of this state shall not be excluded from jury
6 service on account of race, color, religion, sex, *gender identity or expression, sexual orientation*,
7 national origin or economic status.

8 32 Effective Date. This act shall take effect 60 days after its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 415 Date 2/5/09

Committee Judiciary

** Please Print All Information **

Name	Address	Phone	Representing	(check one)	
				Pro	Con
SEN. FOUER-CLARK			DIST. 04	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cheryl Smith	Nottingham	942-7783		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Charlene Andersen	Nottingham	942-7783		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ruth Smith	Centerbury	783-4656		<input checked="" type="checkbox"/>	<input type="checkbox"/>
JUSTIN LYONS	Swan Fey	357-7974		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jacob Wheeler	Amherst	860-6763		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. David Watters Dore		7494539	Stafford	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARY TOWNSEND HOPKINTON		496-9421	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CAROL PERKINS	Plymouth	536-3823		<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP CARLA SKINDER SULLIVAN				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorien Wilson	Woburn	798-3146		<input checked="" type="checkbox"/>	<input type="checkbox"/>
DR. M. A. CARROLL		246-2705		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maria Tingley	Exeter	772-9180		<input checked="" type="checkbox"/>	<input type="checkbox"/>
ARWIE A. PELT			AFSC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Schlachman	Exeter	Rockingham #1	13	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Tanya Lambert	108 Railroad Ave	Epping	679-9887	<input type="checkbox"/>	<input checked="" type="checkbox"/>
TED WHITE	P.O. Box 238	Stafford NH	6640620	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jean Hickey	24 Priest Rd.	Northwood		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pam Moore	70 Gosney Dr	Loudon NH	03307	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sush Owens	327 N. Village Rd.	Loudon NH	03307	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Douglas Chamberlain	1585 1st NH Trk Northwood	942-7884	Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jennifer Desilets	8000 Ave	Raymond N.H.	03077 Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 415

BILL TITLE: adding certain terms regarding non-discrimination to the laws.
DATE: FEB 5, 2009
LOB ROOM: 208 **Time Public Hearing Called to Order:** 5:25P
Time Adjourned: 6:30P

(please circle if present)

Committee Members:

Reps. D. Cote, (Wall), Potter, Hacke, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, (Hagan), L. Perkins, Silva and W. Smith.

Bill Sponsors: Rep. Butler, Carr 1; Rep. B. Richardsom, Ches 5; Sen. Fuller Clark, Dist 24

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* Rep. Ed Butler, Carroll 1; sponsor
Read written testimony.

* Rep. Barbara Hull Richardson, Cheshire 5; co-sponsor
Read written testimony.

* Mikaula Bourque; Laconia; supported
She had a difficult time for much of her life getting used to what was referred to as 'gender disorder'. She tried all the macho activities (firefighter, EMT), but none changed her attitude or emotional stability. When she finally changed gender, she found it hard to support her family. Her brother, unable to deal with the same issue, committed suicide.

* Alexis Keef; Manchester; supported
Read written testimony. When she read "Eventually, this person was fired because of his mouth and attitude towards other employees (2nd page, middle)," she added "but not me."

* Allyson Robinson; Human Rights Campaign; supported
She commented on her own situation - living comfortably within the family setting of a same-sex couple family and working in an accepting environment. As a resident of DC, she has all the things that

Americans take for granted; but, unlike herself, most transgender people must endure humiliation.

Katherine Snell; Gay & Lesbian Advocates & Defenders; supported
She expressed concern that her personal history as a transgender person follows her around and impacts her ability to find and keep employment.

*** Janson Wu; GLAD; supported**

Read written testimony, which listed a few NH companies that provide protection for transgender identities. He also submitted an additional statement he wrote.

*** Sarah Blanchette; Transgender Commission; supported**
Read written testimony.

*** Jennifer Madden, MD; the transgender population; supported**
Read written testimony.

*** Gerri Cannon; PFLAG; supported**
Read written testimony.

*** Lorien Wilson; Loudon; supported**
Read written testimony.

*** David Weber; Exeter; supported**
Read written testimony.

*** Brendan Denehy; Brookline; supported**
He paraphrased his written testimony.

Rep. Frank Tupper, Merrimack 6; supported
He said, "Don't judge a book by its cover. We have a right to our personal lives and our external identities."

Trudy Ricker; Elkins; supported
While other transgender witnesses identified themselves as have transitioned from male to female, this one explained that she was someone whose story was the reverse. She doesn't want to be discriminated against just because she wants to put on a tie when applying for a job.

Additional written testimony submitted

- * Sen. Harold Janeway, District 7; supported**
- * Ellie Chuang, MD; Joslin Diabetes Center; supported**
- * Joe Solmonese; Human Righte Campaign; supported**

Respectfully submitted,
Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 415

BILL TITLE: adding certain terms regarding non-discrimination to the laws.

DATE: 2/5/09

LOB ROOM: 208

Time Public Hearing Called to Order: 5:25 P

Time Adjourned: 6:30 P

(please circle if present)

Committee Members:

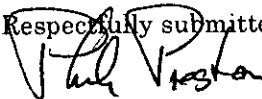
Reps. D. Cole, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva and W. Smith.

Bill Sponsors: Rep. Butler, Carr 1; Rep. B. Richardsom, Ches 5; Sen. Fuller Clark, Dist 24

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Respectfully submitted,



Rep. Philip Preston, Clerk

* Rep. Ed Butler, Carroll 1; sponsor
Read written testimony.

* Rep. Barbara Hull Richardson, Cheshire 5; co-sponsor
Read written testimony.

* Mikaula Bourque; Laconia; supported
She had a difficult time for much of her life getting used to what was referred to as 'gender disorder'. She tried all the macho activities (firefighter, EMT), but none changed her attitude or emotional stability. When she finally changed gender, she found it hard to support her family. Her brother, unable to deal with the same issue, committed suicide.

* Alexis Keef; Manchester; supported
Read written testimony. When she read "Eventually, this person was fired because of his mouth and attitude towards other employees (2nd page, middle)," she added "but not me."

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She commented on her own situation - living comfortably within the family setting of a same-sex couple family and working in an accepting environment. As a resident of DC, she has all the things that Americans take for granted; but, unlike herself, most transgender people must endure humiliation.

Katherine Snell; Gay & Lesbian Advocates & Defenders; supported
She expressed concern that her personal history as a transgender person follows her around and impacts her ability to find and keep employment.

* Janson Wu; GLAD; supported
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Read written testimony.

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Read written testimony.

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Additonal written testimony submitted

- * Sen. Harold Janeway, District 7; supported**
- * Ellie Chuang, MD; Joslin Diabetes Center; supported**
- * Joe Solmonese; Human Righte Campaign; supported**

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 415

BILL TITLE: adding certain terms regarding non-discrimination to the laws.

DATE: March 12, 2009

Subcommittee Members: Reps. Richardson, Nixon, Hackel, Hagan, Elliott

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. HACKEL

Seconded by Rep. NIXON

Vote: 3-2

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Gary Richardson
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 415

BILL TITLE: adding certain terms regarding non-discrimination to the laws.

DATE: March 12, 2009

Subcommittee Members: Reps. Richardson, Nixon, Hackel, Hagan, Elliott

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *HACKEL*

Seconded by Rep. *NIXON*

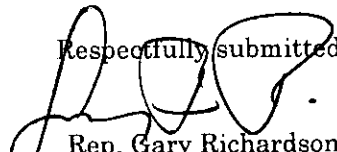
Vote: *YEA: 1. RICHARDSON, 2. HACKEL, 3. NIXON* *NAY: 1. ELLIOTT, 2. HAGAN*

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Gary Richardson
Subcommittee Chairman/Clerk

Testimony

415
TRANSGENDER RIGHTS BILL, HB ~~208~~

NH House of Representatives' Judiciary Committee
Hearing Thursday, Feb. 5, 2009, at 2:00 PM in LOB 208

Please vote yes on HB ~~208~~ 415

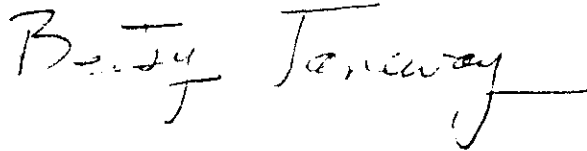
My husband and I are parents of a transgender person. For us it has been a difficult time, learning what this means. We read and work to educate ourselves and we struggle to use the appropriate pronouns, while knowing that the child whose pronouns have changed is still the same wonderful person we have always known and been proud to call our child. Our child has a far more difficult road to travel, with innumerable barriers of ignorance and fear to overcome. We admire our child's courage. We love and respect our transgender child. This bill will help all of our family and many other families in a powerful way.

It is often difficult to understand the variations in human beings. We are complicated creatures! But we are all human.

Please vote yes on HB ~~208~~ 415

Sincerely,

Betsy Janeway
Webster, NH



NH Trans Oral Testimony Janson Wu # 7

I am a Staff Attorney at Gay & Lesbian Advocates & Defenders (GLAD), New England's leading legal rights organization dedicated to ending discrimination based upon sexual orientation, HIV status and gender identity and expression.

I have prepared and submitted written testimony, which addresses more of the legal details of this legislation, and I am happy to answer any legal questions that you may have today. But I wanted to depart from my written testimony to explain why GLAD believes why it is so crucial that the legislature add the phrase "gender identity or expression" to New Hampshire's non-discrimination statutes.

You will hear stories of horrific discrimination today against transgender individuals as well as success stories that demonstrate that when an employer chooses not to discriminate against their employee, it benefits everyone. What you won't hear are the stories of transgender individuals who are too frightened to have their names, faces, and voices heard in public, for fear of discrimination.

GLAD runs a hotline that receives calls from all over New England about discrimination against LGBT individuals. I thought I would share some of those phone calls to impress upon the committee the widespread and pervasive nature of discrimination that we hear about everyday.

These include callers like Susan in Keene, who was mistreated and insulted by her physician, who called transgender people "a small, insignificant part of the population," in justifying his discrimination against her. Or Nikki in Danbury, who faced not only harassing comments at work, but also suffered physical, violent attacks from her coworkers that her employer ignored. Or Megan, who was harassed by security guards at the nearby Walmart and told that she was banned from the store and would be arrested for trespassing if she returned.

Why are discrimination protections so vitally important, particularly to the transgender community? Because, as we have been painfully reminded in this tough economy, a person's ability to make a living, to maintain housing, and to access vital services in our economy can make the difference between impoverishment and survival.

And right now, the transgender community is not surviving. Severe and pervasive discrimination is devastating the transgender community. Widespread employment discrimination has ensured that many

transgender individuals are underemployed or destitute. We are talking about teachers, police officers, doctors, construction workers – people who just like you and me are trained in their skill and are valuable, contributing members of society – who lose their jobs either when they are discovered to be transgender or transition on the job. Housing discrimination ensures that a disproportionate number of transgender individuals are homeless or in unsafe living situations. And discrimination in public accommodations, such as restaurants, banks, and shops, keep transgender individuals from accessing the daily services that most of us take for granted, as well as keeps the New Hampshire economy from benefiting from the participation of many transgender citizens.

Unfortunately, because of this pervasive discrimination, the transgender community is among the most vulnerable sector of our community. Because of this severe and pervasive discrimination, the transgender community is at greater risk for other ills – such as homelessness, HIV infection, addiction, depression, and suicidality.

NH has a long tradition and history of fair treatment for the people in its community. New Hampshire understands that people should be judged on their abilities and contributions, not on irrelevant characteristics such as their gender identity or expression, and that all people should be allowed the fullest opportunity to be valuable and contributing members of society.

By passing this legislation, New Hampshire would join 14 other states that prohibit discrimination based upon gender identity or expression, including Iowa, Minnesota, Maine, and Rhode Island. Over a third of the population in the U.S. is covered by either a municipal ordinance or statewide law protecting gender identity and expression. Not to mention 176 Fortune 500 companies and 266 colleges and universities who have done the same. In New Hampshire alone, over 30 companies provide protections for transgender identities, including University of New Hampshire, Dartmouth College, Bank of America, CVS, Walgreens, American Airlines, and Dell.

It is time for New Hampshire to make right the wrongs that the transgender population has suffered for too long.

Geography - BCBS Denied.

~~AFSA~~
~~MSB~~
~~100~~
~~100~~

Rights - to have protection from being evicted walking down the st

My name is Milkayla Bourque I've worked for the state of NH employment security for 16 years, I speak for this Bill for several reasons we have come a long way with equal rights for race color creed sexual orientation but there has been a group of people that has been overlooked and this bill brings them to light.

~~As~~ I hope to bring emotions and feelings to this meeting and correct a misconception that I wanted to put myself through this.

I'm lucky to work for an employer that accepted me without condition and I have been able to perform my duties uninterrupted, however that is not the case in all employers. My part time employer made comments to me that sales are down not because the economy but due to hiring a transgender, I've known for apx 30 years and felt I was ~~the~~ the odd one out in most cases.

~~They say~~ ^{there is} ~~NO~~ discrimination but

I support this Bill

2015 - Recently the state upheld Anthem Decision
not to cover my therapy due to gender disorder
Diagnoses.

I see this as a small step forward in the right
directions.

I hear a lot of grumble over the choice I
made.

its not a choice I would wish on anyone

~~less~~

My time for electrolysis is not needed so I have
to use Annual time.

my therapist tells me there is a plan

I have to be on hormones for 6 months

Live Real Life Test as a female.

~~Before~~ I can even think about surgery

then spend 30-35 K for the operations. Before my
license can reflect my real inside gender.

I lost my older brother to the quilt he felt
when he himself was fighting with his own gender
issues. I read of fellow transgender male and female

and also giving in to the quilt.

when I went to have my nails done in laconia I
was asked to leave because I made the other customers
uncomfortable.

Now this is not on the same level as being beaten up
or dying but it's to show that without this Bill
this action could continue

This Bill Brings ~~the~~ Dignity TO A Situation That IS
Already Filled With Emotions,
I Cant Tell you The Dread I Feel When I have TO
force Myself into A New Place or Experience ~~the~~ ~~through~~
This Bill I have IS over me A Support it

Thank you for your time.

Mikayla Bourne
160 Belvidere St
Laconia NH 03246
603 513 8425

Robert Zinnes, MD
Primary Care of Hudson
300 Derry Road
Hudson, NH 03051
1/29/09

To Whom it May Concern,

I am a family doctor who works in Hudson for Foundation Medical Partners. I am writing this letter in support of House Bill 415.

I am concerned about the fact that in 2009, gays, lesbians, people who are transgendered and those who have HIV are still facing unequal treatment in our state.


A patient of mine suffered severe depression related to HIV and transgendered status. He did not follow through with medical care and eventually died of complications of HIV. I think that his death would not have happened if he lived in a more supportive environment.

Another patient of mine is a gay male who lost his job for no good reason. He was let go after disclosing to his employer that he was HIV positive.

I take care of a woman who has advanced AIDS and will likely die in the next year. Because she is afraid of the consequences of disclosing her HIV status, she has told no one about her illness other than her significant other and her medical providers. Even her family members do not know that she has HIV. As a result, she has had little social support and has not been able to follow through with treatment of her HIV. This is a tragedy. Appropriate treatments have been available to her but she cannot follow through with adhering to them.

We have a situation where lack of understanding about people who are outside of the mainstream is causing significant medical illness. It is our responsibility to make the state of New Hampshire a more accepting place. That starts with the government. By passing this bill, we tell the residents of New Hampshire it is the norm to respect people no matter what their nationality, sexual orientation, gender or gender identity is.

Thank you very much

Sincerely,

Robert Zinnes, MD

#4

I started out working, where I work now, [Graphics co in NH] as a boy prior to my finding out about me being transgendered. Everything was very good and I got along with everyone.

(20 years experience in the garment industry, now as a graphic artist) I left my job for a couple years with some medical problems and was later asked to come back to fill a different position working in the office as a graphic artist. Things were ok for a short time. From working with them before my transition, and having grown up with one of the employee's there, we all had a good past history as friends. I transitioned approximately 6 years ago, In time, they hired back a old employee who was, as he called himself, a skin head. He used to tell me the only reason he talked to me was because he knew me from before when I was known as a male. Despite this, he harassed me every day. I got all the gay jokes about my sexual preference and I had to play along in order to be on his good side so to speak

At this point, I began to hate my job, that, at one time, was my passion. I got anxiety from just driving to work, thinking about how to deal with him. I would never know what to expect from him, (good days he would leave me alone, bad days he would continue to harass me the whole time i was there.) He used to call me (He or him) in front of customers because he knew it bothered me. I had mentioned to the owner several times to please tell him to stop. The owner

would speak with him and refer to me as the "queer" is getting upset and to lay off me a little, Good for about a few days then it would start again, however, at that time, the company was for sale and i felt my only hope was that the new owners would support me. But that just wasn't the case. The harassment continued to a point in which I felt i needed to contact lawyers. No trans laws in NH. In meeting with the owners several times to speak with this person, he gained hatred towards me and I felt threatened while at work all the time. I felt my only option was to try to get along with this person or find employment elsewhere. It took a while to get him to a point where I could tolerate him. After all, we had to work together. We sorted things out on his terms (me always looking bad). Still I all ways felt unconformable around him. Eventually, this person was fired because of his mouth and attitude towards other employees. So I am ok now and have taught my fellow employees and the new owners how to co exist with a transgendered person, which is:

Just treat me as everyone else, no more no less. (Equality)

I think this law could have given me some protection from this person and maybe he would have been resolved a lot sooner and I suffered a lot less. All I ever wanted to do was my job to the best of my ability, I did not need the extra stress playing some stupid game making myself look bad to make others feel good, this is just is not fair, not right and hopefully illegal.

So this is the reason I am supporting this bill **HB 415.**

I do hope this bill pass's so I may have the right just to be.

who I am and supposed to be!

Alexis SAndy Keef

Written Statement of
Allyson Robinson
to the
House Judiciary Committee of the General Court
State of New Hampshire
February 5, 2009

Chairman Cote, members of the committee, thank you so much for adding my voice to the others you're hearing today. My name is Allyson Robinson. I work as Associate Director of Diversity for transgender concerns with the Human Rights Campaign, America's largest civil rights organization working for lesbian, gay, bisexual, and transgender equality, and I'm here today on behalf of HRC's over 8,600 members in New Hampshire. But more importantly, I'm here to lift up my voice on behalf of the thousands of transgender New Hampshireites who have been rendered voiceless by the very real and constant threat of discrimination and violence.

I am able to speak out for them because I'm one of the lucky ones, one of the privileged few in our transgender community. I have a wife and children and parents and friends who love, support, and encourage me. I have meaningful work that allows me to preserve my sense of human dignity, with a company committed to evaluating me on the basis of my abilities alone. I have a roof over my head and I enjoy three square meals a day; I haven't had to violate my moral principles to keep my family clothed, sheltered, and fed. And I live in a place where I can dine in a restaurant, shop in a store, or take my children to a public playground without fear of being kicked out or having police summoned--a place where those basic rights are protected by the law. All of these things are blessings most people in America take for granted, but which no transgender person can.

And yet despite my good fortune, I want you to know that I'm often afraid. The faces of the hundreds of transgender Americans who have lost their lives to hate violence in recent years, and the stories of thousands more who have suffered humiliating discrimination, are constantly on my mind. Because of that, I look at strangers on the street differently. I worry when I notice someone staring at my family in a public place. I get scared when I hear footsteps behind me in a parking lot. I hug my wife and children tight when I get home from work each night and thank God I've made it. This is what it's like to be a transgender person in our country today, but together we can make things better.

This moment, this very day, is perhaps the most crucial your transgender constituents have ever faced, and what happens here today and in the days to come will determine the way of life for future generations of transgender New Hampshireites. For some, it will make the difference between life and death. I urge you to affirm their basic humanity, and mine, by passing this important legislation. Thank you.

Testimony in favor of HB415

This bill is very personal for me. I would like to tell you about someone in my family. I used to have an Aunt Cherie. At times Cherie was short fused and irritable, which was difficult to deal with. A few years ago Cherie finally summoned the courage to admit that ever since childhood she had felt like a man stuck in a woman's body. Thus began the transition to my Uncle Charley. The difference was amazing, Charley is very relaxed and fun to be with, definitely the person he was meant to be, and I think it is a wonderful thing. But because of this accident of birth, Charley does not have the same basic civil rights that I have. He could be denied housing, or fired from his job simply because he is transgender. He faced discrimination and harassment when went to the emergency room after being injured. This is not right, and you have a chance to correct that injustice. Please vote in favor of this bill to ensure equal rights for my family and for so many others. Thank you.

Lorien Wilson
Loudon

Good afternoon,

My name is Sarah Blanchette and I am a post-operative male to female transsexual. Throughout my adult life I struggled with my gender identity. My heart, mind, and soul were female, yet my physical body was male. By my early 40s, the anxiety and the driving need to live and be accepted as a woman became incessant.

I began seeing a therapist to help me understand and deal with what was happening. But as I discovered myself and explored my options I realized that if I did not transition I would sink deeper into depression and would not be able to function on any level. If I did transition I knew it would cause my family a great deal of pain. I would risk losing my life as I knew it—my family, my friends, my home and possibly my job. My last option was suicide, which I thought about frequently. I decided that I must transition and set a date of May 2004 to start—living—full time.

In March of 2004 I notified the VP of Administrative affairs where I worked that I suffered from Gender Identity Dysphoria. I told her about my struggle, my plans to live full-time as a woman, and my hope that this transition would not disrupt my work. I assured her that I would continue to present myself in a professional and appropriate manner, and asked for her support and understanding.

A month later I was called to the Vice President's office, where she handed me a two-page letter. It read in part, and I quote, "You recently disclosed to senior administration your transsexual status. Upon consideration, you are immediately relieved of your duties..." end quote. I felt like I had been thrown to the wolves. I felt like I was being discriminated against just because I did not fit their mold of who I should be.

At the time, I had been employed for 7 years in information technology at this institution. I loved my job and was happy to have a workplace I considered home. I had been a loyal employee and had on many occasions put my employer's needs above my own and the needs of my family, working weekends and holidays as necessary to accomplish my job. I had received a number of commendations for having performed my duties in a professional and efficient manner.

I was devastated. On a practical level, losing my job was terrifying. How would I support my family? Or continue saving for retirement? Or pay for my transition?

On a personal level, their decision felt like a judgment that the life I had risked so much for, was wrong. And that I was wrong for living it. But what I wanted was really something very basic—to live my life freely, and with dignity. I had approached them with honesty, and in return asked for their support and understanding. They could not—or would not—give me that.

What happened to me is one of the reasons that it is so important that you support HB415. We do not seek special treatment; we seek equal protections under the law. This bill will insure that we may be who we really are without the need to worry about persecution and discrimination just because we are different.

Thank you.

Sarah Blanchette

My Testimony

My name is Dr Jennifer Elizabeth Madden and I am a family physician in Amherst, NH. I am also a male to female post-op transsexual and I am here to represent the transgender population.

I was born with an intersex condition; a genital birth defect that required corrective surgery at age 3 and again when I was 20. Adolescence was a humiliating time for me. I couldn't take showers with other boys because they would often make fun of me. I started cross-dressing when I was in 5th or 6th grade and most of my life, I dreamed of being a girl.

I reached a crisis in my life when I was 48 yrs old. My father in-law died after a rather short illness. He was president of his high school class and a sheriff of the town of Montague. I couldn't take confession.

This conflict I had with my gender identity was consuming me. I knew I couldn't fight it any longer on my own. I thought I was perverted, and feared my employer would find out, and my reputation ruined. I had reached a crisis in my life of enormous proportions and needed answers to why I thought the way I did. I contemplated suicide many times. I broke down to my family physician and wept in her exam room thinking maybe some pill could help me. I started having panic attacks and at one point had to pull off the road because I couldn't drive. Through the aid of one of my psychiatry friends, I learned of Dr Anne Boedecker, a gender therapist. Her business card said "come sit by me".

To my surprise, when I met with Dr. Boedecker and told her my story, she told me that I was not sick and that I was simply transgendered; the sex of my body and my brain just weren't matched. She further explained to me that most behavioral health specialists no longer think of this condition as a psychiatric illness although therapy is still often helpful as the coming out process can force relationship changes at home and at work with, family, friends, and coworkers and many will not be

accepting.

The effect of a medical professional exonerating me from a lifetime of guilt and shame is probably difficult for you to imagine but for me, it was a revelation.

I requested a meeting with the administrators of the company that I work for and explained to them that I was seeing a gender specialist and was planning to start the process of changing my sex. The bewilderment I saw on their faces was just the beginning of a very painful transition process.

In order to maintain my employment, I had to agree to a medical leave of absence, a psychiatric evaluation, and the loss of my family practice in Merrimack, NH. I was also told by certified letter not to try and contact any of patients or my employment would be terminated. When I returned to work as Jennifer Madden, I wasn't allowed to have my own practice again for 2 years. In order to stay employed, I agreed to help open an Urgent Care center and work every Saturday and every other Sunday. In the fall of 2007, I did open a one physician practice in Amherst. Because I was not a newly hired physician, I was not given a typical time specified salary guarantee and my salary has gone down \$45,000. I believe my patient satisfaction has been good and I'm not aware of any major patient complaints. I enjoy taking care of my patients, many of my old patients have returned to me, and I have new ones now that sometimes travel from other states to see me.

My hope is that, by example and education, other employers, whether in the medical field or some other field of work, will not subject their employees to the same degree of scrutiny or require them to make the kind of sacrifices that I've had to make in order to stay employed. I believe gender identity and gender expression are inherent features of our genetic make-up, preprogrammed from birth, often becoming manifest in adulthood, and not a choice.

In retrospect, I think it would have been easier for me to have had heart disease or cancer. Those medical conditions are ones people understand.

Jennifer Madden MD

To the Judiciary Committee of New Hampshire's State House of Representatives

This is a letter in support of HB 415 and HB 436, and urging a "no" vote on HB 453. These sentiments are congruent with NH's state constitution, which provides for equality of rights to life, liberty, property, and happiness under the law.

HB415

There is no doubt that discrimination, and all that results from it, happens to people on the basis of their gender identity and/or expression here in NH. As a clinical psychologist, I've worked with NH residents who have suffered such discrimination, the effects of which have been negative with regard to their mental health. NH prides itself on a "live free" heritage; as long as people are discriminated against for who they are or what they look like, they are not free.

HB 436

Civil unions are a "separate and unequal" phenomenon. They are unequal because they are not recognized by the federal government, thus those granted a civil union are not entitled to the benefits of those who are able to legally marry. By allowing same-gender marriages, HB 436 eliminates this discriminatory, unequal practice under civil law without trampling on the rights of religious organizations to structure marriage practices according to their beliefs.

HB 453

As per the above, limiting legal marriage to opposite-gender couples is a discriminatory practice.

I urge the Committee to support HB 415 and HB 436 and reject HB 453.

Ellen Schecter, PhD
Clinical Psychologist
Lebanon NH

Testimony of David Weber on HB 415

Thank you, Mr. Chairman, Members of the Committee:

Before my retirement last June I taught English at Exeter Academy for 38 years. I knew thousands of students there; among them were several transgendered young persons who had already begun to face the difficult conflict between their birth anatomy and their sense of themselves in terms of gender. Some had female bodies but had a deep sense of themselves as male; some had male bodies and a deep sense of themselves as female. The students who had supportive parents generally did well, both in terms of graduating and in terms of their overall contributions to the school community. Things were much more difficult for those whose parents were unable to accept their child's assertion of gender difference, especially if the parents' response was outright rejection.

Two of the ones I came to know did not come out publicly as transgendered until they were in college, but four others shared with friends or even with the institutional school the nature of their inner division. Through counseling and some modest accommodations like an acceptance of name changes, the school tried to be helpful. In one case the student was allowed to speak at a school Assembly, a required appointment for a thousand adolescents. Their response at the end of his talk was a standing ovation. At another Assembly the speaker was Jenny Boylan, a transgender English professor at Colby College, whose compelling memoir *She's Not There* is very helpful reading on this subject.

There is every reason to think that respectful treatment under the civil rights statute would encourage healthy management of transgender persons' personal issues. There is no reason to think that the secular law should continue to exacerbate what is necessarily a difficult experience. Today I want to thank Representative Butler and Gerri Cannon for their leadership on this issue; and I thank you for your attention and your thoughtful consideration of this important legislation.

2-5-09

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**Mr. and Mrs. Peter R. Flynn
103 Madbury Road
Durham, New Hampshire
03824**

February 4, 2009

Judiciary Committee
House of Representatives
State of New Hampshire
33 North State Street
Concord, NH 03301

As the extremely proud parents of a gay daughter and her spouse we ask for support for House Bill 436, sponsored by Rep. Jim Splaine providing equal marriage rights to same-sex couples and also support for House Bill 415 sponsored by Rep. Ed Butler providing protections against discrimination based on gender identity or expression.

Our daughter lives in Massachusetts and was married there in 2006 on a weekend when over 200 participants shared the love, joy and commitment of beautiful and inspiring wedding events.

We have never understood the abject fear that some people express when the subject of same-sex marriage is brought up. Their belief that somehow allowing gay people to wed will destroy the institution of marriage is a belief based on the same kind of historical prejudice that blacks, women and others of different ethnic backgrounds have experienced and overcome. We felt during and after our daughter's wedding that if some of those fear-ridden people could have been present, surely they would have seen and understood the beauty that exists in a union of two people based on complete and total commitment to each other, no matter the gender or sexual preference.

In the same way the head of the Joint Chiefs of Staff changed his position against gays in the military because he became acquainted with the individuals and their human concerns, those against equal rights and protections would change if they would only try to reach out and see the humanity in the issue.

Thank you for this opportunity to speak out. Please bring some rational, compassionate, human sensitivities to this important debate.

Sincerely,

Laura and Peter Flynn



UNITARIAN-UNIVERSALIST CHURCH

58 Lowell Street • Nashua, New Hampshire 03064
Rev. Stephen D. Edington, Minister • 603-882-1091

February 3, 2009

To the Members of the Judiciary Committee—New Hampshire House of Representatives:

I am writing to urge your support of House Bill # 415 that will extend anti-discrimination protection to transgender residents of New Hampshire.

In the more than 20 years that I have been the minister of the Unitarian Universalist Church of Nashua—a congregation of approximately 300 members—I have been pleased to welcome a number of transgender individuals into our membership. As I have listened to their stories, and have come to better understand their struggles, I have been impressed with both their courage and their integrity, as they have sought to come to terms with their gender identity.

I am pleased as well that my congregation has been able to offer these persons a safe and accepting community where they feel affirmed and validated as the human beings they are.

It is out of this kind of experience that I seek your support of HB #415. Just as I was—and probably still am—on a learning curve of my own when it comes to understanding the conditions and challenges transgender persons deal with, I am aware that our larger society is on a learning curve as well.

Whatever levels of understanding and awareness there may be in our larger society with regard to transgender individuals, these persons should not be subjected to any form of discrimination in the areas HB #415 addresses; nor should they be subjected to the occasional acts of violence which, tragically, have been perpetuated against them.

Again, I urge your support of this very important non-discrimination Bill.

Thank you.

Respectfully,

Rev. Stephen D. Edington, Minister
Unitarian Universalist Church of Nashua, New Hampshire

Brendan Denehy
31 Mason Road
Brookline, N.H. 03033
bdenehy@stewart.mv.com
603/673-6749

Good afternoon. I'm here today to speak in favor of HB 415.

Twelve years ago, back in 1997, I was proud to be the moderator of the Coalition to End Discrimination, when New Hampshire became the 10th state to outlaw discrimination against its gay and lesbian citizens in the areas of employment, housing and public accommodation. I spoke here, one of many people who urged the legislature to provide all citizens with equality. Our slogan then was 'No More, No Less.' Passing that law meant a great deal to the thousands of gay and lesbian citizens of New Hampshire, who no longer had to fear that they could be fired, denied housing, or refused service in a store or restaurant. It has allowed us to become fuller participants in our communities and in our state.

At the time that bill was passed, many of us hoped that it would provide the necessary protections for the Transgendered Community of New Hampshire. And since that time, I have spoken to some people in the legal community who still feel that this legislation does just that. However since that time, I have come to recognize that our anti-discrimination language didn't go far enough, and it's time we do the right thing, and add gender identity to our non-discrimination laws.

Back when we were trying to get sexual orientation added to the antidiscrimination law, I had one member of the Legislature tell me it wasn't necessary because "there were only 8 homosexuals in the whole state of New Hampshire!". And that might have been what he saw, because at that time many gays and lesbians were afraid to be publicly visible for who they really were.

Since that time, I've come to understand that many members of the Transgender community still feel that way. Legally our current anti-discrimination laws may protect them; but do they dare risk their homes and their jobs? We need legislation like HB 415 to clearly state that it is wrong to discriminate against New Hampshire citizens based on their real or perceived gender identity.

Back in 1997, opponents to that antidiscrimination bill predicted grave consequences to the citizens of our state if discrimination was ended. Over ten years have passed, and none of those fears have been realized. Our state continues to be one of the best places in the country to live, something that I am very proud of. We need to continue to make New Hampshire a safe and caring place to live in for all our citizens. No More, and No Less.

My name is Gerri Cannon. I'm a resident of Merrimack, NH. I'm a self employed Carpenter. I'm also the Council President of PFLAG-NH and a member of the NH UCC Committee for GLBT Concerns.

Today I'm here to share a little education about who HB 415 will help.

What does being Transgender mean? It means that a person's gender presentation may not reflect their birth gender or what our society feels are the norms for male or female presentation. Transgender people could be Masculine Females, Feminine Males, Crossdressers, Pre-, Post- or Non-operative Transsexuals or Intersexed People, (People born with ambiguous genitalia.) Being Transgender has nothing to do with an individual's Sexual orientation.

In all these cases, being transgender is not a lifestyle one decides to be. In reality the lifestyle chosen by many transgender people is to make every attempt to live the way society expects men and women to be and present themselves. For many transgender people, hiding that driving force within themselves results in the highest suicide rate for any class of individuals. I have talked with many Transgender people on the phone that are challenged by their internal drive who they are and are concerned about losing their families, jobs and places to stay. It takes a lot to bring these people back to realize that they have value and self worth.

For those individuals that decide to be true to their own needs, they are faced with Job discrimination, loss of family connections, public ridicule and medical challenges that might help them become more complete and acceptable to the rest of society.

Today you will hear a few of the many stories about transgender people, trying to live life here in New Hampshire. What you won't hear are the many more stories of people that told me that they were too scared to testify, for fear of losing their jobs or their families.

At this point I'd like to ask you a few questions?

- Have you ever been asked to leave a public place because of how you were dressed?
- Have you ever been threatened with job loss because what you wore outside of work did not meet your boss' expectations?
- Have you ever lost a job because someone found out something about your personal background?

Well I have and this is why I'm here to share my story.

I've struggled with being a transgender person since I was a teenager in the 1960's. I decided back then to try and fight my internal needs and do what everyone expected me to do. I got an education. Found a great High Tech job. Married and raised two children. All the while I was fighting my own need to be more female than male. The problem I ran into was that I was losing the fight and often times found myself dressing as a woman. At that point in my life I was considered to be a closeted crossdresser and was scared to death to go out in public, (a common situation for the largest part of the crossdressing community.)

About 12 years ago I started seeing a therapist and also started appearing in public as Gerri. This was the start of my "transition." It was a realization that I could go out in public with some minor challenges. However, most of my "Public" life was spent in Gay clubs, away from the general public.

I suppose many people that met me back then they thought I was a Drag queen, when in fact I was a Senior Marketing Manager for Hewlett Packard Corp. As long as I stayed hidden in those clubs I was safe. However, when I attended an afterhour's tradeshow party in Houston, I was seen by some of my co-workers, including my boss (who was aware of my tendencies). He was asked by one of the attendees to have me removed from that event. My boss didn't ask me to leave that night, but made me aware that if I were to appear that way again, he would ask me to leave.

Shortly after that encounter my boss asked me not to "Cross-dress" when traveling for business. I made him aware that I felt his request was beyond the scope of my employment, but that I would try not to be seen by customers or other HP employees.

A year passed and while traveling to a Microsoft Event in Toronto I was seen "Cross-dressed" while attending a Microsoft sponsored concert by a fellow employee. Shortly after returning I was put on notice by my management for insubordination and was threatened with job loss if this happened again. At that point I contacted a GLAD lawyer and was informed that there were no explicit protections for Transgender people in NH that could protect me. If I had been working in California or Colorado, they could have helped.

For the next year I did as I was told. During that time my marriage deteriorated and my spouse and I separated. While living alone I decided to formally start my "real life test" as prescribed by the Standards of care for people wishing to "Transition" from one gender to another. I submitted my letter to human resources at HP and made them aware that I would be transitioning in the workplace. Within 2 months HP had a major layoff. I was in the first group to be let go. The very weekend I was let go another person was hired into my group to do a job I was fully capable of doing. In order to collect my "lay off financial package" I had to agree not to sue them.

I've encountered other situations since then. I started my carpentry business 3 years ago and have been fairly successful. Last spring I had been working for a couple in Nashua, doing a wide range of home repair jobs. The Nashua Telegraph published a story about my daughters and I, as a part of their transgender series, in June. The following week the couple I had been working for decided they had other more important things to take care of and that they wouldn't need my services any more. I realize that the legislation we are asking for won't protect me from losing jobs with average homeowners, but it may help me compete for commercial business.

What is being asked for in this bill isn't for any special treatment. What we are asking, is for Transgender people to be treated like everyone else. What is happening today is that Transgender people are being mistreated, but it is being called something other than being transgendered. In my case it was "Insubordination" or "Sorry there's no more work for you". In reality, someone just didn't want to have to deal with me.



Joslin Diabetes Center

affiliate of Southern New Hampshire
Medical Center

SOUTHERN NEW HAMPSHIRE ENDOCRINOLOGY

29 Northwest Blvd. | 603 577-5760
Nashua, NH 03063 | 603 577-5765 fax

280 Main Street | 603 577-3290
Suite 431 | 603 577-3295 fax
Nashua, NH 03060

February 3, 2009

Dear House Judiciary Committee:

I am writing to support passage of House Bill 415, an act adding certain terms regarding non-discrimination to the laws.

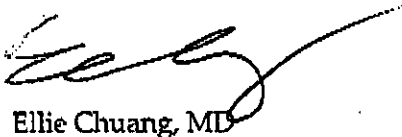
I am a general endocrinologist who has practiced in the southern New Hampshire region for over 3 years. In this time period I have treated between 10 to 15 transgender patients at various stages in their journey, and have heard many of their stories in detail. Most have suffered or are continuing to suffer depression and/or other psychopathology, sometimes severe and complicated by suicide attempts. Some are homeless or have gone through periods of homelessness, and certainly hopelessness, frequently worsened by lack of support from family and friends. Many have had difficulty working or keeping a job, whether due to depression and/or discrimination related to their transgender status being revealed. I have seen a clear correlation between transgender patients' happiness and wellbeing, and the level of support or discrimination they are experiencing in their personal and work lives.

I do have a number of patients who are receiving hormone therapy with testosterone or estrogen and have always found it gratifying to see how well they do on therapy. However, it has been dismaying to witness the fact that in most cases, medical insurance will not cover the cost of therapy or the necessary monitoring bloodwork, because it is not "medically necessary." For that reason, it is even more important that my patients be gainfully employed, free from discrimination, so that they can possibly afford these vital and medically necessary treatments.

Having witnessed firsthand the detrimental health effects that discrimination of all types can have on transgender individuals, I support House Bill 415 to prohibit discrimination on the basis of gender identity and expression.

Please do not hesitate to contact me if I can provide further information.

Sincerely,



Ellie Chuang, MD

Southern New Hampshire Endocrinology

Joslin Diabetes Affiliate at Southern NH Medical Center

280 Main Street, Suite 431

Nashua, NH 03060

603-577-3290

Ellie Chuang, MD

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Work: (603) 577-3290
Fax: (603) 577-3295
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EDUCATION

- | | |
|-----------|---|
| 2003-2005 | Endocrinology Fellowship. Northwestern University Medical School. Chicago, IL |
| 2000-2003 | Internal Medicine Residency. Cleveland Clinic Foundation. Cleveland, OH |
| 1996-2000 | MD. University of California at San Diego School of Medicine. La Jolla, CA |
| 1990-1994 | BA, Biology. Harvard University. Cambridge, MA |

LICENSURE/BOARD CERTIFICATION

- Currently licensed to practice medicine in New Hampshire
- Board-certified in Internal Medicine
- Board-certified in Endocrinology
- Board-certified in Clinical Lipidology

HONORS and AWARDS

- BA *magna cum laude*.
- Senior thesis, awarded *magna cum laude*: "Molecular phylogeny of bacterial endosymbionts in bivalves"
- Radcliffe College nominee for the Barry M. Goldwater Scholarship for students with outstanding potential for a career in mathematics or the natural sciences
- Elizabeth Cary Agassiz Certificate of Merit in recognition of academic achievement of high distinction 1990-91

RESEARCH/EMPLOYMENT

- | | |
|--------------|---|
| 2005-Present | Staff physician (Endocrinologist), Foundation Medical Partners. Nashua, NH |
| 2003-2005 | Dr. Mark Molitch, Division of Endocrinology, Northwestern University Medical School. Prospective clinical research: "Cabergoline treatment of rheumatoid arthritis: A pilot study." |

- 2002-2003 Dr. Darwin Conwell, Dept of Gastroenterology, Cleveland Clinic. Literature review and retrospective study of acute pancreatitis secondary to hypertriglyceridemia.
- 1999-2000 Dr. Lisa Orloff, Head and Neck Surgery Department, UC San Diego School of Medicine. Literature review of 90+ publications: "Environmental tobacco smoke exposure: is it related to cancers of the head and neck and of the cervix?" Fulfilled medical school research requirement.
- 1994-96 Dr. Jane Gitschier, UC San Francisco/Howard Hughes Medical Institute. Used molecular biology methods/techniques on several projects, including cloning Factor VIII homologues in animal species; investigating the molecular genetic basis of a familial thrombocytopenia; cloning a bacterial ATPase/copper transporter.
- 1993-94 Dr. Colleen Cavanaugh, Dept of Organismal Biology, Harvard University. Wrote honors senior thesis on molecular phylogeny of endosymbiotic bacteria within bivalves living in hostile environments; based on bacterial 16S rRNA sequences.
- 1991-93 Dr. J Woodland Hastings, Dept of Cellular Biology, Harvard University. Used molecular and protein chemistry techniques to study the translational control of circadian rhythms in dinoflagellates.

PUBLICATIONS

- Chuang E**, Molitch M. Prolactin and autoimmune diseases in humans. *Acta Biomed* 2007, 78; Suppl 1: 255-61.
- Chuang E**, Molitch M. Screening and treatment of early diabetic renal disease in type 1 and type 2 diabetes. In: *The Diabetic Kidney* (eds. P. Cortes and C. Mogenson). Totowa, NJ: Humana Press, 2006.
- Chuang E** and Molitch M. Hypertension in diabetes. In: *Clinical Diabetes* (ed. V. Fonseca). Philadelphia: Elsevier, Inc., 2006. 354-370.
- Chuang E** and Molitch M. Prevention of diabetes in high-risk populations, with application to older populations. *Geriatrics and Aging* 2004, 7(1): 17-20.
- Distel DL, Baco AR, **Chuang E**, Morrill W, Cavanaugh C, Smith CR. Do mussels take wooden steps to deep-sea vents? *Nature* 2000, 403(6771): 725-6.
- Distel DL and **Chuang E**. Molecular phylogeny of bacterial endosymbionts in bivalves. Abstract, American Society of Microbiology Meeting, 1993.
- Techel D, **Chuang E**, Lee DH, Comolli J, Hastings JW. Changes in the ultrastructural localization of mRNA for a circadian regulated protein. *Molecular Marine Biology and Biotechnology* 1996, 5(4): 241-8.

PROFESSIONAL AFFILIATIONS

- Member, Endocrine Society
- Member, American Society of Bone and Mineral Research
- Member, National Lipid Association
- Member, International Society of Clinical Densitometry

Statement by Janson Wu, Esq.
Before the House Judiciary Committee in Support of House Bill 415
An Act Adding Certain Terms Regarding Non-Discrimination To The Laws

Honorable Chairman Cote and Members of the Committee:

I am grateful for the opportunity to testify in strong support of House Bill 415, An Act Adding Certain Terms Regarding Non-Discrimination To The Laws. This legislation would add “gender identity and expression” protections to New Hampshire’s non-discrimination statutes, including New Hampshire’s general anti-discrimination protections in employment, housing and public accommodations, Chapter 354-A, and New Hampshire’s hate crimes law, Chapter 651:6. HB 415 would also add anti-discrimination protections for lesbian, gay, bisexual and transgender (LGBT) individuals to remaining non-discrimination provisions in New Hampshire’s RSA that do not already include such protections. While sexual orientation protections were added to Chapter 354-A and other selected non-discrimination statutes in 1997, there are still important non-discrimination provisions, such as protections against discrimination in accessing state mental health services or in jury selection, that do not include protections for all LGBT individuals.

I am a Staff Attorney at Gay & Lesbian Advocates & Defenders (GLAD). As an attorney at New England’s leading legal rights organization dedicated to ensuring legal equality for lesbians, gay men, bisexuals, transgender people, and those living with HIV or AIDS, a key focus of my work has been addressing the pervasive discrimination faced by transgender people in housing, employment, public accommodations, access to benefits, education, and other areas. My goal today is to explain why it is so crucial that the legislature add the phrase “gender identity or expression” to New Hampshire’s non-discrimination statutes.

I. Gender Non-Conforming People Desperately Need Legal Protection From Discrimination.

The need to protect people from discrimination and violence on the basis of gender identity and expression is great.

Every day across this country, transgender people are disproportionately the victims of non-random, targeted violence. They include people like Angie Zapata in Colorado, who while born male, began living as a woman six years ago. At the young age of 18, she was brutally beaten to death with a fire extinguisher last year when the perpetrator found out that she was transgendered. They include Jamie Rondeau, who just a few weeks ago was beaten on the street in Lowell, Massachusetts, while his attackers repeatedly called him “faggot” and sexual slurs. And while it is difficult to accurately document the frequency of these crimes due to vast underreporting, it is clear that hate crimes against transgender people are a widespread and significant problem.

Likewise, employment discrimination can severely undermine an individual’s ability to make a living and support his/her family. For example, Anthony Barreto-Neto, a decorated police officer in Vermont who had been recognized for his longstanding public service was run off the police force by fellow officers after they learned about his transgender status through an internet search. After discovering that Mr. Barreto-Neto was born female and transitioned to male, fellow officers issued him faulty equipment and subjected him to a continuous pattern of harassment and inferior work conditions that became so severe he had to leave his job.

Unfortunately, these cases represent just the tip of the iceberg. Transgender people throughout New Hampshire, in cases which have not received the attention of those just mentioned, face serious discrimination every day in jobs, housing, and public accommodations. Unfortunately because of pervasive prejudice, discrimination and misunderstanding, transgender people need a law to allow them to do that which most people take for granted – work, seek and find housing, and use public accommodations without being subjected to prejudice and discrimination.

Nothing could be further from the spirit of New Hampshire's commitment to freedom and liberty for its citizens. This law would make clear that such discrimination and violence is condemned by state policy.

II. Gender Identity And Expression Is A Distinct Concept From Sexual Orientation And Needs Separate Protections Against Discrimination.

In this bill, "gender identity or expression" is defined as "a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth." This concept refers to people whose identification as either male or female does not match up with what they were assigned at birth, such as transsexual individuals. It also includes any person whose outward expression of their gender does not fall within society's stereotypes of what a man or woman should act like, such as a masculine woman and a feminine man.

Sexual orientation is a distinct concept from gender identity and expression. Gender identity refers to how a person identifies internally as either male or female, and gender expression refers to how a person expresses and presents his/her gender – whether as masculine or feminine. In contrast, sexual orientation refers to whether a person is emotionally, physically and romantically attracted to someone of the same or different sex. For example, a male individual may be gay (i.e. attracted to someone of the same sex – male) and still present as stereotypically masculine. Or, a transsexual woman (i.e. born male and then transitioned to female) may be attracted only to men and therefore identify as straight.

Sometimes, these concepts may intersect, or a person discriminating against another individual may view these concepts as one and the same. For example, a person may discriminate against a transsexual individual because they perceive that the individual is gay or lesbian – whether that is accurate or not. Alternatively, a gay man may be harassed because the person discriminating against him does not believe a "real" man should be attracted to other men. Either way, both sexual orientation and gender identity or expression need to be explicitly protected in order to fully protect the entire LGBT community from both forms of discrimination.

III. This Bill Is A Clarification, Not A Change In Law.

HB 415 is a clarification of law, not a change. Transgender individuals should already be protected under existing sex discrimination protections in New Hampshire, which generally follows federal case law interpretation of sex discrimination under Title VII of the federal Civil Rights Act. Madeja v. MPB Corp., 149 N.H. 371, 378 (N.H. 2003) (when presented with "an issue of first impression under RSA chapter 354-A, we rely upon cases developed under Title VII to aid in our analysis"). However, these legal protections under sex have not been uniformly applied by courts nationally to protect transgender individuals. As such, explicit protections for transgender individuals will help affirm and clarify New Hampshire's anti-discrimination

protections, so that it is clear to all that New Hampshire does not tolerate discrimination based upon a person's gender identity or expression.

The modern national trend in case law interpreting sex discrimination protections is for both state and federal courts to interpret existing sex discrimination prohibitions to protect transgender individuals. See, e.g., Schroer v. Billington, 577 F.Supp.2d 293 (D.D.C. 2008) (holding that an employer's refusal to hire employee because she informed them of her intention to transition from male to female was "literally discrimination 'because of sex'"); Smith v. City of Salem, Ohio, 378 F.3d 566, 573 (6th Cir. 2004); Maffei v. Kolaeton Indus., Inc., 626 N.Y.S.2d 391, 396 (N.Y. Sup. Ct. 1995).

However, there is not complete uniformity across these court decisions, and some courts have found otherwise. See, e.g., Oiler v. Winn-Dixie Louisiana, Inc., Order and Reasons, 2002 WL 31098541 (E.D. La. Sept. 16, 2002). As a result, legal uncertainty and inconsistency exists in New Hampshire as to the extent of sex discrimination protections for transgender individuals.

By adding explicit protections for gender identity and expression alongside sex discrimination protections in New Hampshire's RSA, House Bill 415 provides clarity to our courts and promotes consistency. Moreover, employers, landlords, businesses, and citizens can also rely upon these explicit protections as much needed guidance in conducting their daily business, with the clear knowledge that discrimination against a person based upon gender identity or expression has no place in New Hampshire.

IV. Laws State A Public Policy In Addition To Providing An Enforcement Mechanism.

The purpose of non-discrimination laws is at least two-fold. One purpose is to create a vehicle for preventing and redressing discrimination against vulnerable and targeted communities or individuals. Because House Bill 415 codifies existing law, it serves this purpose by clarifying that New Hampshire law prohibits discrimination against transgender persons.

A second and no less important purpose is to establish a clear statement of public policy in favor of equal treatment of transgender persons. By making this policy clear, the law helps to discourage discrimination and to limit the need for the enforcement mechanisms in place. In other words, part of the goal of adopting clear non-discrimination laws is to give notice to employers, landlords, lenders, and owners of establishments in order to keep discrimination from occurring in the first place.

III. New Hampshire Will Join Other States And Local Jurisdictions That Ensure Freedom From Discrimination Based On Gender Identity and Expression.

New Hampshire need not fear that by explicitly prohibiting discrimination based on gender identity and expression, it will be entering into uncharted territory. Instead, New Hampshire will join the growing number of state and local governments that have already recognized that preventing discrimination based on gender identity and expression is both necessary and desired and therefore should be addressed explicitly in law. In passing House Bill 415, New Hampshire would become the 14th state to explicitly prohibit discrimination against transgender people, joining Iowa, Minnesota, Maine, Rhode Island, Vermont, California, Hawaii, Illinois, New Mexico, Colorado, Oregon and Washington.

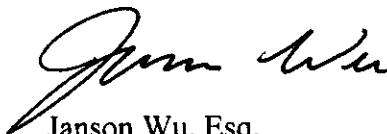
Over 30 years ago, Minneapolis became the first municipality to adopt transgender-specific non-discrimination language. Since then, the number of additional jurisdictions that have adopted similar measures has grown at a dramatic rate. One study estimates that over one-

third of the country's population live in a jurisdiction that has in place some form of explicit protection for transgender people.¹ In addition, there are hundreds of employers and dozens of universities with non-discrimination policies protecting transgender people.²

It is time for New Hampshire to join this national movement towards equality and freedom from discrimination and violence for all citizens, regardless of their gender identity or expression.

February 5, 2009

Submitted by:



Janson Wu, Esq.
Staff Attorney
Gay & Lesbian Advocates & Defenders
jwu@glad.org

¹ See http://www.thetaskforce.org/downloads/reports/fact_sheets/transgender_year_in_review.pdf.

² A small sampling of New Hampshire universities and employers with non-discrimination policies protecting transgender people includes: University of New Hampshire, Dartmouth College, Bank of America, CVS, Walgreens, American Airlines, and Dell. For a complete list see <http://www.transgenderlaw.org/college/index.htm#policies> and <http://www.transgenderlaw.org/employer/index.htm>.



HUMAN
RIGHTS
CAMPAIGN

February 5, 2009

To the House Judiciary Committee of the General Court
State of New Hampshire
Concord, New Hampshire

Re: Written Testimony Submitted in Support of House Bill 415:
An Act Adding Certain Terms Regarding Non-Discrimination to the Laws

Dear Chairman Cote and members of the House Judiciary Committee:

I am the president of the Human Rights Campaign, the nation's largest lesbian, gay, bisexual and transgender civil rights group. I write to you, on behalf of HRC's more than 8,600 members and supporters in New Hampshire, in support of House Bill 415, which would add gender identity or expression to the list of classes of people protected from discrimination under New Hampshire laws.

Beginning with Minnesota in 1993, 12 states¹ and the District of Columbia have enacted laws prohibiting discrimination based on gender identity or expression. This includes three states in New England—Maine, Rhode Island, and Vermont. Massachusetts and Connecticut are expected to take up gender identity legislation this year. More than 500 private businesses across the United States, including more than a third of Fortune 500 companies, have adopted policies that prohibit discrimination based on gender identity or expression.

Each of these entities, public and private, has taken these actions for a simple, but powerful, reason: to protect people from arbitrary discrimination in employment, places of public accommodation, housing, and other areas. A person's gender identity or expression has nothing to do with their ability to be a good employee, a qualified renter, or a solid citizen. Like existing laws prohibiting discrimination based on, for example, national origin, gender, or sexual orientation, prohibiting discrimination based on gender identity or expression helps ensure that people will be judged on their merits, not on stereotypes, misunderstanding, or bias.

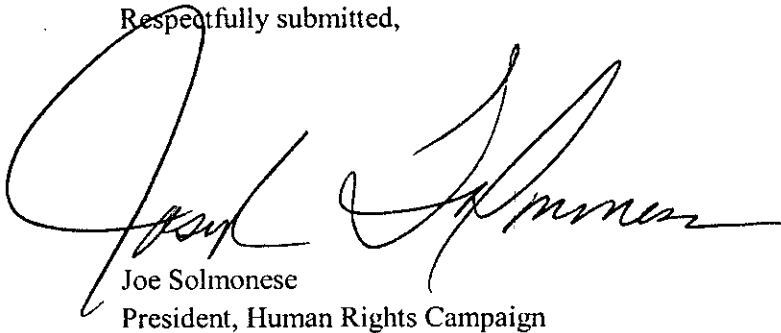
Right now, transgender people in New Hampshire simply have no legal protection against even the most

¹ A 13th state, Hawaii, prohibits discrimination based on gender identity or expression in housing and public accommodations, though not in employment.

blatant and outrageous forms of discrimination. HB 415 speaks directly to this gap in the law and makes a clear statement that New Hampshire does not tolerate arbitrary discrimination in any form.

I hope that you will vote to pass this important legislation, and that it will be enacted into law.

Respectfully submitted,



Joe Solmonese
President, Human Rights Campaign

HB 415 testimony from Rep. Ed Butler

This bill will add gender identity and expression to our nondiscrimination statute and all of its parts; will add gender identity and expression to the hate crimes law and will add in sexual orientation in a few places where it has been missed in our nondiscrimination clauses.

What is gender identity and expression? It is that human experience in which a person=s identity does not conform with his or her birth gender. It is that situation in which, for example, a man is effeminate on one end of the spectrum B or at the other end of this continuum, feels that his physical gender simply does not conform to his internal gender identity, which is female. Some men and some women experience this dissonance between outward and internal gender identities.

Statistics are hard to come by but I read this in a commentary by Joanne Herman a Dartmouth graduate: Next time you find yourself in a crowd of 5,000 people, consider this: In the crowd there will be on average one person living with muscular dystrophy. There will also be on average two people who have already undergone male-to-female sex-reassignment surgery. And there may as many as 75 in that crowd who fall under the transgender umbrella.

Another person I talked with here in NH told me that I would be surprised to learn that there are approximately 3000 transsexuals - those that have already made the physical transition - living in NH.

For some of us, being transgendered is something that is hard to understand. Even for a gay man, someone who is a part of a sexual minority, I have had a journey of learning and understanding. I say this only to try to give you some ease with what may be discomfort or confusion over what it means to be transgendered.

And yet, as I have talked to people here in the legislature and in my community about this bill, I've been surprised to hear acknowledgement and recognition that many of us in our work and community lives know people who are transgendered.

After all, there=s the trans woman in North Conway, who until her retirement was a male merchant marine while working and a tall, attractive woman when she wasn't working B proudly going about her daily activities in our community.

I've brought in testimony which I will distribute from a wonderful musician and composer in my neck of the woods who tried to transition to his female persona but

was forced back into his male identity because of discrimination and fear.

There are these people that I know of in my community. There are those who are visible in your communities, I'm sure. And there are so many more who are invisible because of fear of discrimination and abuse. Some of those stories you have heard about and others you will learn more of today.

Our nondiscrimination laws were created to acknowledge the reality of discrimination and the need to protect our citizens, all citizens, from discriminatory practices.

Section 354-A:1

Title and Purposes of Chapter. B 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, race, creed, color, marital status, familial status, physical or mental disability or national origin (and sexual orientation is included at the end of this section!) 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 ...

This group, this class, of people who approach you today are asking for the exact protections that our nondiscrimination law provides. You will hear about loss of jobs; problems with housing; discrimination in places of public accommodation.

If we can begin to offer some degree of respect and security by including gender identity and expression in our non-discrimination and hate crimes law, we will be taking yet another step towards protecting those basic rights which our State Constitution defines as the “natural, essential and inherent rights – among which are the enjoying and defending life and liberty; acquiring, possessing and protecting property and, in a word, of seeking and obtaining happiness ...”

There are many people here today who will be able to answer some of your questions better than I. I am happy to try to answer your questions but may refer some of them to those who will come after me.

HB 415 - adding certain terms regarding non-discrimination to the laws

This bill simply adds “gender identity or expression” or “gender identity or expression, sexual orientation” to the current laws on the State Commission for Human Rights and other applicable statutes.

Currently 13 states and Washington, DC nationwide and at least 98 counties and cities have passed non-discrimination laws to explicitly protect people from discrimination on the basis of gender identity and expression. In our state of New Hampshire there are already at least 27 employers based or operating here that have adopted non-discrimination policies that include gender identity.

It seems fair that all persons be recognized and not discriminated against because of their gender identity.



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To: Rep. David E. Cote, Chairman
House Judiciary Committee

From: Jim Cianci, Committee Researcher
House Committee Research

Date: February 5, 2009

Re: HB 415 adding certain terms regarding non-discrimination to the laws

Please find attached RSA chapter 354-A, the New Hampshire "Law Against Discrimination."

TITLE XXXI

TRADE AND COMMERCE

CHAPTER 354-A

STATE COMMISSION FOR HUMAN RIGHTS

Section 354-A:1

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, 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.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:8, eff. Jan. 1, 1998.

Section 354-A:2

354-A:2 Definitions. – In this chapter:

I. "Commercial structure" means any building, structure, or portion thereof which is continuously or intermittently occupied or intended for occupancy by a commercial or recreational enterprise, whether operated for profit or not, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

II. "Commission," unless a different meaning clearly appears from the context, means the state commission for human rights created by this chapter.

III. "Covered multifamily dwellings" means:

- (a) Buildings consisting of 4 or more units if such buildings have one or more elevators; and
- (b) Ground floor units in other buildings consisting of 4 or more units.

IV. "Disability" means, with respect to a person:

- (a) A physical or mental impairment which substantially limits one or more of such person's major life activities;
- (b) A record of having such an impairment; or
- (c) Being regarded as having such an impairment.

Provided, that "disability" does not include current, illegal use of or addiction to a controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802 sec. 102).

V. "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for

sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

VI. "Employee" does not include any individual employed by a parent, spouse or child, or any individual in the domestic service of any person.

VII. "Employer" does not include any employer with fewer than 6 persons in its employ, an exclusively social club, or a fraternal or religious association or corporation, if such club, association, or corporation is not organized for private profit, as evidenced by declarations filed with the Internal Revenue Service or for those not recognized by the Internal Revenue Service, those organizations recognized by the New Hampshire secretary of state. Entities claiming to be religious organizations, including religious educational entities, may file a good faith declaration with the human rights commission that the organization is an organization affiliated with, or its operations are in accordance with the doctrine and teaching of a recognized and organized religion to provide evidence of their religious status. "Employer" shall include the state and all political subdivisions, boards, departments, and commissions thereof.

VIII. "Employment agency" includes any person undertaking to procure employees or opportunities to work.

IX. "Familial status" means one or more individuals, who have not attained the age of 18 years of age, and are domiciled with:

(a) A parent, grandparent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

"Familial status" also means any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

X. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

XI. "Multiple dwelling" means 2 or more dwellings, as defined in paragraph V, occupied by families living independently of each other.

XII. "National origin" includes ancestry.

XIII. "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, trustees in bankruptcy, receivers, and the state and all political subdivisions, boards, and commissions thereof.

XIV. "Place of public accommodation" includes any inn, tavern or hotel, whether conducted for entertainment, the housing or lodging of transient guests, or for the benefit, use or accommodations of those seeking health, recreation or rest, any restaurant, eating house, public conveyance on land or water, bathhouse, barbershop, theater, golf course, sports arena, health care provider, and music or other public hall, store or other establishment which caters or offers its services or facilities or goods to the general public. "Public accommodation" shall not include any institution or club which is in its nature distinctly private.

XIV-a. "Qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this chapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

XIV-b. "Reasonable accommodation" may include:

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

(b) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other

similar accommodations for individuals with disabilities.

XIV-c. ""Sexual orientation" means having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state or impose any duty on a religious organization. This definition does not confer legislative approval of such status, but is intended to assure basic rights afforded under this chapter.

XIV-d. ""Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in this paragraph. In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include:

(a) The nature and cost of the accommodation needed under this chapter.

(b) The overall financial resources of the facility involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility.

(c) The overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; and the number, type, and location of its facilities.

(d) The type of operation or operations of the employer, including the composition, structure, and functions of the workforce of such employer; the geographic separateness, administrative, or fiscal relationship of the facility in question to the employer.

XV. ""Unlawful discriminatory practice" includes:

(a) Practices prohibited by RSA 354-A;

(b) Practices prohibited by the federal Civil Rights Act of 1964, as amended (PL 88-352);

(c) Practices prohibited by Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. §&sec 3601-3619);

(d) Aiding, abetting, inciting, compelling or coercing another or attempting to aid, abet, incite, compel or coerce another to commit an unlawful discriminatory practice or obstructing or preventing any person from complying with this chapter or any order issued under the authority of this chapter.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:9, eff. Jan. 1, 1998. 2006, 181:1, eff. Jan. 1, 2007; 274:1, eff. July 1, 2006.

Section 354-A:3

354-A:3 State Commission for Human Rights. –

I. There is hereby created a commission to be known as the New Hampshire commission for human rights. Such commission shall consist of 7 members, who shall be appointed by the governor, with the consent of the council, and one of whom shall be designated as chair by the governor. The term of office of each member of the commission shall be for 5 years.

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

III. Any member of the commission may be removed by the governor and council for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard.

Source. 1992, 224:1, eff. May 13, 1992. 2000, 277:1, eff. June 16, 2000.

Section 354-A:4

354-A:4 General Powers and Duties of the Chair. – The chair shall serve as the chief executive officer of the commission. The chair shall promote the efficient transaction of its business and the orderly handling of complaints and other matters before the commission. The chair shall designate commissioners to investigate and commissioners to hold hearings pursuant to RSA 354-A:21 and shall fix the times and places of public hearings. In the event of the chair's absence or inability to act, the vice-chair, or if no vice-chair has been designated, a commissioner designated by the chair shall act in the chair's stead. Otherwise a commissioner shall be designated by the governor to act as chair.

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:5

354-A:5 General Powers and Duties of the Commission. – The commission shall have the following functions, powers and duties:

- I. To establish and maintain its principal office in the city of Concord, and such other offices within the state as it may deem necessary.
- II. To meet and function any place within the state.
- III. To appoint such attorneys, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.
- IV. To obtain upon request and utilize the services of all governmental departments and agencies.
- V. To adopt rules, under RSA 541-A, suitable to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.
- VI. To receive, investigate and pass upon complaints alleging violations of this chapter.
- VII. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and, in connection therewith, require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the commission, on the ground that the testimony or evidence required may tend to incriminate or subject such person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- 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, 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.
- 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, race, color, marital status, familial status, physical or mental disability, religious creed or national origin, and on account of sexual orientation.

X. To render biennially to the governor and council a full written report of its activities and of its recommendations.

XI. To adopt an official seal.

XII. To accept and utilize for its purposes, functions and duties as set forth in this chapter public and private grants, gifts, donations and contributions of money and other assets and properties, real and personal, of all types and kinds, without limitations.

XIII. To formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or its political subdivisions in aid of such policies and purposes.

XIV. To utilize the services of the department of justice to obtain injunctive relief in state and federal courts.

XV. To charge reasonable fees for educational services, programs, publications, and other written materials.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:10, eff. Jan. 1, 1998. 2000, 277:2, eff. June 16, 2000.

Equal Employment Opportunity

Section 354-A:6

354-A:6 Opportunity for Employment Without Discrimination a Civil Right. – The opportunity to obtain employment without discrimination because of age, sex, 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.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:11, eff. Jan. 1, 1998.

Section 354-A:7

354-A:7 Unlawful Discriminatory Practices. – It shall be an unlawful discriminatory practice:

I. For an employer, because of the age, sex, 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.

II. For a labor organization, because of the age, sex, 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.

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, 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.

IV. For any employee to be required, as a condition of employment, to retire upon or before reaching a specified predetermined chronological age, or after completion of a specified number of years of service unless such employee was elected or appointed for a specified term or required to retire pursuant to Pt. II, Art. 78 of the constitution of New Hampshire. It shall not be unlawful for an employer to:

(a) Establish a normal retirement age, based on chronological age or length of service or both, which may be used to govern eligibility for and accrual of pension or other retirement benefits; provided that such normal retirement age shall not be used to justify retirement of or failure to hire any individual; or

(b) Require any individual employee to retire on the basis of a finding that the employee can no longer meet such bona fide, reasonable standards of job performance as the employer may have established.

V. Harassment on the basis of sex constitutes unlawful sex discrimination. Unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature constitutes sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

VI. (a) For the purposes of this chapter, the word "sex" includes pregnancy and medical conditions which result from pregnancy.

(b) An employer shall permit a female employee to take leave of absence for the period of temporary physical disability resulting from pregnancy, childbirth or related medical conditions. When the employee is physically able to return to work, her original job or a comparable position shall be made available to her by the employer unless business necessity makes this impossible or unreasonable.

(c) For all other employment related purposes, including receipt of benefits under fringe benefit programs, pregnancy, childbirth, and related medical conditions shall be considered temporary disabilities, and a female employee affected by pregnancy, childbirth, or related medical conditions shall be treated in the same manner as any employee affected by any other temporary disability.

VII. (a) For any employer not to make reasonable accommodations for the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee, unless such employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(b) For any employer to deny employment opportunities, compensation, terms, conditions, or privileges of employment to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such employer to make reasonable accommodation to the physical or mental impairments of the applicant or employee.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:12, eff. Jan. 1, 1998. 2006, 181:2, eff. Jan. 1, 2007.

Fair Housing

Section 354-A:8

354-A:8 Equal Housing Opportunity Without Discrimination a Civil Right. – The opportunity to obtain housing without discrimination because of age, sex, 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.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:13, eff. Jan. 1, 1998.

Section 354-A:9

354-A:9 Definitions. – For the purposes of this subdivision:

I. "Business of selling or renting dwellings" means:

- (a) Participation, within the preceding 12 months, as principal in 3 or more transactions involving the sale or rental of any dwelling or commercial structure or any interest therein;
- (b) Participation, within the preceding 12 months, as agent, other than in the sale of one's own personal residence, in providing sales or rental facilities or sales or rental services in 2 or more transactions involving the sale or rental of any dwelling or commercial structure or any interest therein; or
- (c) Ownership of any dwelling designed or intended for occupancy by, or occupied by, 3 or more families.

II. "Residential real estate-related transaction" means any of the following:

- (a) The making or purchasing of loans secured by residential real estate or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling.
- (b) The selling, brokering, or appraising of residential real property.

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:10

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, 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, 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, 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, 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, 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 immune deficiency 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, 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, race, color, creed, disability, national origin, marital status, or sexual orientation.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:14, eff. Jan. 1, 1998. 2006, 126:1, eff. July 1, 2006.

Section 354-A:11

354-A:11 Interference, Coercion or Intimidation. – It shall be an unlawful discriminatory act to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:12

354-A:12 Unlawful Housing Discrimination on the Basis of Disability. – It shall be unlawful:

I. To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:

(a) That buyer or renter.

(b) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.

(c) Any person associated with that buyer or renter.

II. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(a) That person.

(b) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.

(c) Any person associated with that person.

III. For purposes of this section, "discrimination" includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of

existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

(1) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;

(2) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(3) All premises within such dwellings contain the features of adaptive design, including: an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

IV. Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of subparagraph III(c)(3).

V. Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Source. 1992, 224:1, eff. May 13, 1992. 2006, 126:2, eff. July 1, 2006.

Section 354-A:13

354-A:13 Exemptions. –

I. The provisions relating to unlawful housing discrimination shall not apply:

(a) To the sale or rental of any single-family house sold or rented by the owner, if such owner does not own more than one such single-family house at any one time, if such house is sold or rented:

(1) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(2) Without the publication, posting or mailing, after notice, of any advertising or written notice in violation of RSA 354-A:10, III above; but nothing in this paragraph shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(b) To the rental of a housing accommodation in a building which contains housing accommodations for not more than 3 families living independently of each other, if the owner or members of his family reside in one of such housing accommodations; or

(c) To the rental of a room or rooms in a housing accommodation with not more than 5 such rooms, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

II. Nothing in this chapter shall prohibit a religious organization, association, or society, or any

nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

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

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:14

354-A:14 Number of Occupants. – Nothing in this chapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:15

354-A:15 Housing for Older Persons. – No provisions in this chapter regarding familial status or age apply with respect to housing for older persons. Housing for older persons means housing:

I. Provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;

II. Intended for, and solely occupied by, persons 62 years of age or older; or

III. Intended and operated for occupancy by at least one person 55 years or older per unit.

IV. In determining whether housing qualifies as housing for persons 55 years or older, the commission shall adopt rules which require at least the following factors:

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

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

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

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

(a) Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of paragraphs II or III, provided, that new occupants of such housing meet the age requirements of paragraph II or III.

(b) Unoccupied units, provided, that such units are reserved for occupancy by persons who meet the age requirements of paragraph II or III.

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

Source. 1992, 224:1, eff. May 13, 1992. 2003, 58:1, eff. Jan. 1, 2004.

Public Accommodations

Section 354-A:16

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, 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.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:15, eff. Jan. 1, 1998.

Section 354-A:17

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, 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, 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, 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.

Source. 1992, 224:1, eff. May 13, 1992. 1997, 108:15, eff. Jan. 1, 1998.

Exemption

Section 354-A:18

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

Source. 1992, 224:1, eff. May 13, 1992.

Retaliation

Section 354-A:19

354-A:19 Retaliation and Required Records. – It shall be an unlawful discriminatory practice for

any person engaged in any activity to which this chapter applies to discharge, expel, or otherwise retaliate or discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under this chapter.

Source. 1992, 224:1, eff. May 13, 1992.

Records

Section 354-A:20

354-A:20 Required Records. – It shall not be an unlawful discriminatory practice to record any data required by law, or by the rules and regulations of any state or federal agency, provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this chapter.

Source. 1992, 224:1, eff. May 13, 1992.

Complaint Procedures and Review

Section 354-A:21

354-A:21 Procedure on Complaints. –

I. (a) Any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization, employment agency or public accommodation alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The attorney general or one of the commissioners may, in like manner, make, sign, and file such complaint.

(b) In connection with the filing of such complaint, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this chapter, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

II. (a) After the filing of any complaint, one of the commissioners designated by the chair shall make, with the assistance of the commission's staff, prompt investigation in connection therewith; during the course of the investigation, the commission shall encourage the parties to resolve their differences through settlement negotiations; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, the commissioner shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has occurred in the course of such endeavors, provided that the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been so disposed of. When the investigating commissioner finds no probable cause to credit the allegations in the complaint, the complaint shall be dismissed, subject to a right of appeal to superior court. To prevail on appeal, the moving party shall establish that the commission decision is unlawful or unreasonable by a clear preponderance of the evidence. The findings of the investigating commissioner upon questions of fact shall be upheld as long as the record contains credible evidence to support them. If it reverses the finding of the investigating commissioner, the superior court shall remand the case for further proceedings in accordance with RSA 354-A:21, II, unless the complainant or respondent elects to

proceed with a hearing in superior court pursuant to RSA 354-A:21-a.

(b) In case of failure to eliminate an unlawful discriminatory practice complained of, or in advance thereof, if, in the judgment of the commissioner making the investigation, circumstances so warrant, the commissioner shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer charges of such complaint at a hearing before 3 members of the commission, designated by the chair and sitting as the commission, at a time and place to be fixed by the chair and specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by it.

(c) The case in support of the complaint may be presented before the commission by the complainant or complainant's representative and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the subsequent deliberation of the commission in such case; and the aforesaid endeavors at conciliation shall not be received in evidence. The respondent shall file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his other answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and transcribed at the request of any party. The cost of transcription shall be borne by the party requesting the transcript unless the party is indigent, in which case the commission shall pay the cost.

(d) If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, or the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, as in the judgment of the commission, will effectuate the purpose of this chapter and including a requirement for report of the manner of compliance. Such cease and desist orders for affirmative relief may be issued to operate prospectively. The commission may also order compensatory damages to be paid to the complainant by the respondent and, in order to vindicate the public interest, order the respondent to pay an administrative fine. The administrative fine shall be deposited in the general fund. The amount of the administrative fine shall not exceed:

(1) \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice in any administrative hearing or civil action.

(2) \$25,000 if the respondent has been adjudged to have committed a prior discriminatory practice in any administrative hearing or civil action and the adjudication was made no more than 5 years prior to the date of filing the current charge.

(3) \$50,000 if the respondent has been adjudged to have committed 2 or more discriminatory practices in any administrative hearings or civil actions and the adjudications were made during the 7-year period preceding the date of filing of the charge.

(e) When issuing an order awarding back pay, the commission shall calculate the back pay award by determining the amount the complainant would have earned but for the unlawful discriminatory practice. The commission shall subtract from that amount any unemployment compensation or interim earnings received by the complainant for the time period covered by the back pay award.

(f) If upon all the evidence the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of its order shall be delivered in all cases to the attorney general, and such other public officers as the

commission deems relevant or proper. The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure and its own actions thereunder.

III. Any complaint filed pursuant to this section by an aggrieved person must be filed within 180 days after the alleged act of discrimination. Any complaint filed pursuant to this section by the attorney general or one of the commissioners must be so filed within 180 days after the alleged unlawful discriminatory practice.

IV. In administering this section, the commission shall be exempt from the provisions of RSA 541-A:29, II, but shall close each case or commence adjudicative proceedings on such case under RSA 354-A:21 within 24 months after the filing date of the complaint.

Source. 1992, 224:1-3. 1994, 251:3, eff. Jan. 1, 1996; 412:44, eff. Aug. 9, 1994. 2000, 277:3, 4, 5, eff. June 16, 2000. 2006, 126:3, 4, eff. July 1, 2006.

Section 354-A:21-a

354-A:21-a Choice of Forum. –

I. Any party alleging to be aggrieved by any practice made unlawful under this chapter may, at the expiration of 180 days after the timely filing of a complaint with the commission, or sooner if the commission assents in writing, but not later than 3 years after the alleged unlawful practice occurred, bring a civil action for damages or injunctive relief or both, in the superior court for the county in which the alleged unlawful practice occurred or in the county of residence of the party. Any party alleged to have committed any practice made unlawful under this chapter may, in any case in which a determination of probable cause has been made by the investigating commissioner, remove said complaint to superior court for trial. A court in cases so removed may award all damages and relief which could have been awarded by the commission, except that in lieu of an administrative fine, enhanced compensatory damages may be awarded when the court finds the respondent's discriminatory conduct to have been taken with willful or reckless disregard of the charging party's rights under this chapter. A superior court trial shall not be available to any party if a hearing before the commission has begun or has concluded pursuant to RSA 354-A:21, II(b), or to a complainant whose charge has been dismissed as lacking in probable cause who has not prevailed on an appeal to superior court pursuant to RSA 354-A:21, II(a). In superior court, either party is entitled to a trial by jury on any issue of fact in an action for damages regardless of whether the complaining party seeks affirmative relief.

II. The charging party shall notify the commission of the filing of any superior court action, and the respondent shall notify the commission of the removal to superior court after a finding of probable cause. After such notice, the commission shall dismiss the complaint without prejudice. A party electing to file a civil action with the superior court under paragraph I shall be barred from bringing any subsequent complaint before the commission based upon the same alleged unlawful discriminatory practice.

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

Source. 2000, 277:6, eff. June 16, 2000. 2006, 126:5, 6, eff. July 1, 2006.

Section 354-A:22

354-A:22 Judicial Review and Enforcement. –

I. Any complainant, respondent or other person aggrieved by such order of the commission may obtain judicial review of the order, and the commission or any interested person may obtain an order of court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the superior court of the state within any county in which the unlawful practice which is the subject of

the commission's order occurs or in which any person required in the order to cease and desist from an unlawful practice or to take other affirmative action resides or transacts business.

II. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing before the commission in the case of a petition for judicial review, and issuance and service of an order of notice as in proceedings in equity. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order or decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission, with full power to issue injunctions against any respondent and to punish for contempt of court. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. In petitions to enforce commission orders, the court may, in its discretion, award the complaining party reasonable attorney's fees and costs.

III. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, or in the alternative to move the court to accept such additional evidence itself, provided he shows reasonable grounds for the failure to adduce such evidence before the commission. The superior court shall have the authority to make all rulings of law, findings of fact and determinations of damages and fines, if any, notwithstanding any such rulings, findings or determinations made by the commission. All such proceedings shall be heard and determined by the court as expeditiously as possible and shall take precedence over all other matters before it, except matters of like nature. The jurisdiction of the superior court shall be exclusive and its final order or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final order or decree in proceedings in equity.

IV. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination and for the purposes of judicial review of the order of the commission. The review shall be heard on the record without requirement of printing. The commission may appear in court by one of its attorneys. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within 30 days after the service of the order of the commission.

V. If the complainant brings an action in federal court arising out of the same claims of discrimination which formed the basis of an order or decision of the commission, such order or decision shall be vacated and any appeal therefrom pending in any state court shall be dismissed.

Source. 1992, 224:1, eff. May 13, 1992; 224:4, 5, eff. Jan. 1, 1993. 2000, 277:7, eff. June 16, 2000.

Miscellaneous Provisions

Section 354-A:23

354-A:23 Posting of Commission Notices. – Every person, employer, employment agency, labor union, real estate agency and rental office subject to this chapter shall post in a conspicuous place or places on his premises a notice to be prepared or approved by the commission, which shall set forth excerpts of this chapter and such other relevant information which the commission deems necessary to explain the chapter. Any employer, employment agency, real estate agency, rental office or labor union refusing to comply with the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:24

354-A:24 Criminal Penalty. – Any person, employer, labor organization or employment agency, who or which shall willfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under RSA 354-A, or shall willfully violate an order of the commission, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Procedure for the review of the order shall not be deemed to be such willful conduct.

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:25

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

Source. 1992, 224:1, eff. May 13, 1992.

Section 354-A:26

354-A:26 Severability. – If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

Source. 1992, 224:1, eff. May 13, 1992.

February 12, 2009

To the Judiciary Committee Members

Re: HB 415 *Purpose is to add Gender Identity or Expression to all of the states non-discrimination statutes, as well as to add Sexual orientation to a few states where it is currently missing.*

This bill is greatly needed to ensure protection of every citizen of New Hampshire.

Presently, there are a minority of people who, because of how they were born into this world, can be harassed, bullied, and removed from employment because they do not conform to the expectations of society.

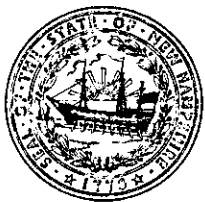
In my role as a leader in PFLAG (Parents, Friends, and Family of Lesbians and Gays), I have heard many heart wrenching stories from people who have lost their jobs and been forced into poverty because they were "different" and their employers felt they were not a "good fit" for a particular job or career. Some of the most tragic stories are of transgender people who once were in highly respected professional positions (such as medical doctor or policeman) who were "let go" from their jobs because they needed to and chose live their lives truthfully and openly. These people find themselves underemployed and sometimes living on welfare due to the biases and bigotry of former employers.

I urge you to educate yourselves about the concerns of people of varying sexual orientations and gender identity, and pass this law.

Enclosed is our most recent guide to understanding and supporting transgender and gender non-conforming people, along with questions and answers for family and friends. We certainly want to count our legislative bodies as our friends in making our culture safer and more accepting for gay, lesbian, and transgender people.

Sincerely,

Roberta Barry
PFLAG Northeast Regional Director
170 Jordan Rd.
Keene, N.H. 03431
352-6854
bbarry29@ne.rr.com
www.pflag.org



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

March 1, 2009

Dear Honorable Members of the Judiciary Committee,

I am writing in support of HB 415, a bill that I am already on record as supporting on the day of the Public Hearing.

This bill seeks to protect individuals from discrimination based on their gender identity or expression and sexual orientation. This bill is government at its best, providing protection to the vulnerable among us. I believe this bill seeks to simply add a class of people who were inadvertently left out of previous anti-discrimination legislation. Sometimes we are slow to understand or recognize the plight of others and we need to adjust our laws to better reflect reality. Such is the case here.

I trust you will do the right thing and support this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Schlachman".

Rep. Donna Schlachman
Exeter

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 415

BILL TITLE: adding certain terms regarding non-discrimination to the laws.

DATE: MAR 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. RICHARDSON

Seconded by Rep. WEBER

Vote: 10-10 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR (Please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 415

BILL TITLE: adding certain terms regarding non-discrimination to the laws.

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Amendments:

Sponsor: Rep. OLS Document #:

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Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. Weber

Vote: 10/10 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

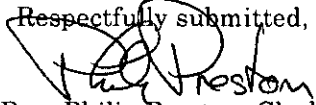
Seconded by Rep.

Vote: (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR (Please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

JUDICIARY

Bill #: HB 415 Title: Adding certain terms regarding non-discrimination to the laws.

PH Date: 2 / 5 / 09

Exec Session Date: 3 / 17 / 09

Motion: OTP

Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman	✓	
Wall, Janet G, V Chairman	✓	
Potter, Frances D	✓	
Hackel, Paul L	✓	
Preston, Philip, Clerk	✓	
Richardson, Gary B	✓	
Weber, Lucy M	✓	
Browne, Brendon S	✓	
Nixon, David L		✓
Thompson, Robert B	✓	
Watrous, Rick H	✓	
Rowe, Robert H		✓
Elliott, Nancy J		✓
DiFruscia, Anthony R		✓
Mead, Robert D		✓
O'Brien, William L		✓
Hagan, Joseph M		✓
Perkins, Lawrence B		✓
Silva, Peter L		✓
Smith, William B		✓
TOTAL VOTE:	10	10

Committee Report


HB 415 adding certain terms regarding non-discrimination to the laws.

Blurb of the Proponents

10-10 No recommendation

This is a bill which simply adds the words "gender identity or expression" to the antidiscrimination and hate crimes statutes. This change is needed to protect transgendered persons or others with gender identity issues from job loss, housing discrimination and other discriminatory practices. Gender identity issues are not a matter of personal choice. They are often the result of chromosomal abnormalities and accompanying physical ambiguity. Existing language in the antidiscrimination statute, in the opinion of the Human Rights Commission, provide adequate protection for this population. Nothing in this bill will provide protection for sexual predators in public restrooms. Similar protections are already in place in 13 states and numerous political subdivisions. The level of fear and misunderstanding generated by this bill convinces the proponents of the urgent need for protection for this vulnerable population.

Rep. Lucy Weber

OK - 

415.

Statement

Blurb of the Proponents

HB 415 - adding certain terms regarding non-discrimination to the laws.

10-10 - No recommendation

This is a ~~simple~~ bill which simply adds the words "gender identity or expression" to the ~~the~~ anti-discrimination and hate crimes statutes. This change is needed to protect transgendered persons or others with gender identity issues from job loss, housing discrimination and other discriminatory practices.

~~Transgendering is often caused by chromosomal~~

Gender identity issues are not a matter of personal choice. They are often the result of chromosomal abnormalities and accompanying physical ambiguity. Existing language in the anti-discrimination statute ^{in the opinion of the HRC} does not ~~provide~~ provide adequate protection for this population. Nothing in this bill will provide protection for sexual predators in public restrooms. Similar protections are already in place in 13 states and numerous political subdivisions. The level of fear and misunderstanding generated by this bill convinces the proponents of the urgent need for protection for this vulnerable population.

Smiley.

D - do you want me to elaborate on his principle?

HB 415 - ~~Minority~~ - OPPONENTS Statement

HB 415 is a complete violation of our citizens' rights. To make the entire 1.3 million residents of our state uncomfortable and afraid in the restroom is unconscionable and an example of the tyrannical minority pushing around the majority. This would also allow a man to enter the ladies locker room at the gym and the sauna. People are in various states of undress and are very often the only ones there. Men are at risk of women entering their private spaces and accusing them of sexual advances. Our children are at particular risk. When a child enters the restroom a predator of any sex could be there waiting and no one can say a word to them. All a man in a girls room would need to say if someone questioned him why he was there, is that he thought he was a woman and was just using the restroom. We need to protect the children of NH from sexual predators. Our neighbor to the south, MA, has experimented with this line of thinking and has all kinds of problems. Constituents reported that the unisex bathrooms in Europe are a haven for rapists.

A law very similar to HB 415 passed in Colorado, has since become known as the "bathroom bill" because it has opened up public restrooms, once reserved to either men or women, to all genders depending upon their "gender expression" at that time. As you can imagine, this new law has also opened up an opportunity for sexual predators to use it as a "cover" to enter intimate areas in search of a victim. Gender confusion is NOT a biological disorder, but rather a psychological one and has been classified as such by the American Psychiatric Association. People with Gender Identity Disorder (GID) need compassion and treatment, not confirmation of their disorder through special rights.

In addition, the NH bill also serves as a threat to the religious liberties of business owners in NH. A refusal to do business with someone based on a sincerely held religious belief would now violate the law. That threatens the religious liberties of every Christian, Jewish or Muslim business owner who operates a business on faith-based principles.

New Hampshire already has the term "sexual orientation" in its anti-discrimination laws, it does not need to add "gender identity and expression" to it as well, as it will only cause confusion and open itself up for countless lawsuits. If someone were to challenge or not allow a professing trans-gender to use the restroom of their choice they could be charged with a hate crime. That case would go through the Commission on Human Rights. Another bill that has been recommended OTP by Judiciary Committee (HB 686) says that. If you are in question of a Human Rights violation the Plaintiff has the choice of court or the Commission. The Defendant does not. The Plaintiff can remove to the Court, after the commission's finding, but the Defendant cannot. The penalties can be as high as \$50,000. So if you question why a man is in the ladies room, he can bring you before the Commission, they can fine you \$50,000 and there is nothing you can do about it.

Rep. Nancy Elliott for the Minority

OK - 

MINORITY REPORT

COMMITTEE: Judiciary
BILL NUMBER: HB 415
TITLE: Adding certain terms regarding non-dise
to the laws.
DATE: 3-18-09 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 OUGHT TO PASS W/ AMENDMENT
 INEXPEDIENT TO LEGISLATE

Amendment No.

HB415 Is a complete violation of our citizens rights. To make the entire 1.3 million residents of our state uncomfortable and afraid in the restroom is unconscionable and an example of the tyrannical minority pushing around the majority. This would also allow a man to enter the ladies locker room at the gym and the sauna. People are in various states of undress and are very often the only ones there. Men are at risk of women entering their private spaces and accusing them of sexual advances. Our children are at particular risk. When a child enters the restroom a predator of any sex could be there waiting and no one can say a word to them. All a man in the girls room would need to say if someone questioned him why he was there, is that he thought he was a woman and was just using the restroom. We need to protect the children of NH from sexual predators. Our neighbor to the south, MA, has experimented with this line of thinking and has all kinds of problems. Constituents reported that the unisex bathrooms in Europe are a haven for rapists.

A law very similar to HB415, passed in Colorado, has since become known as the 'bathroom bill' because it has opened up public restrooms, once reserved to either men or women, to all genders depending on their "gender expression" at that time. As you can imagine, this new law has also opened up an opportunity for sexual predators to use it as "cover" to enter intimate areas in search of a victim. Gender confusion is NOT a biological disorder, but rather a psychological one and has been classified as such by the American Psychiatric Association. People with Gender Identity Disorder (GID) need compassion and treatment, not confirmation of their disorder through special rights.

In addition, the NH bill also serves as a threat to the religious liberties of business owners in NH. A refusal to do business with someone based on a sincerely held religious belief would now violate the law. That threatens the religious liberties of every Christian, Jewish or Muslim business owner who operates a business on faith-based principles

New Hampshire already has the term "sexual orientation" in its anti-discrimination laws, it does not need to add "gender identity and expression" to it as well, as it will only cause confusion and open itself up for countless lawsuits. If someone were to challenge or not allow a professing trans-gender to use the restroom of their choice they could be charged with a hate crime. That case would go before the Commission on Human Rights. Another bill that has already left the Judiciary Committee (HB686) on the fast track to pass says that: " If you are in question of a Human Rights Violation the Plaintiff has the choice of court or the Commission. The Defendant does not. The Plaintiff can appeal to the Court, but the Defendant cannot. The penalties can be as high as \$50,000. So if you question why a man is in the ladies room, he can bring you before the Commission, they can fine you \$50,000. and there is nothing you can do about it.

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