

Bill as Introduced

HB 1264 - AS INTRODUCED

2012 SESSION

12-2172
05/09

HOUSE BILL **1264**

AN ACT establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.

SPONSORS: Rep. Bergevin, Hills 17; Rep. Duarte, Rock 1; Rep. Sapareto, Rock 5

COMMITTEE: Judiciary

ANALYSIS

This bill permits an individual to choose not to provide accommodations, goods, or services for a marriage if doing so would violate his or her conscience or religious faith.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.

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

1 1 New Section; Freedom of Religion and Conscience in Marriage. Amend RSA 457 by inserting
2 after section 37 the following new section:

3 457:37-a Freedom of Religion and Conscience in Marriage. Notwithstanding any other provision
4 of law, no person, including a business owner or employee thereof, shall be required to provide
5 services, accommodations, advantages, facilities, goods, or privileges to an individual if the request is
6 related to the solemnization, celebration, or promotion of a marriage and providing such services,
7 accommodations, advantages, facilities, goods, or privileges would be a violation of the person's
8 conscience or religious faith. A person's refusal to provide services, accommodations, advantages,
9 facilities, goods, or privileges in accordance with this section shall not create any civil claim or cause
10 of action or result in any state action to penalize or withhold benefits from such person.

11 2 Effective Date. This act shall take effect January 1, 2013.

Amendments

Rep. Bergevin, Hills. 17
February 13, 2012
2012-0752h
08/09



NOT OFFER

Amendment to HB 1264

1 Amend RSA 457:37-a as inserted by section 1 of the bill by replacing it with the following:

2

3 457:37-a Freedom of Religion and Conscience in Marriage. Notwithstanding any other provision
4 of law, no person, including a business owner or employee thereof, shall be required to provide
5 services, accommodations, advantages, facilities, goods, or privileges to an individual if the request is
6 related to the solemnization, celebration, or promotion of marriage and providing such services,
7 accommodations, advantages, facilities, goods, or privileges would be a violation of the person's
8 conscience or religious faith, based on part I, articles 4, 5, and 6 of the New Hampshire constitution.
9 A person's refusal to provide services, accommodations, advantages, facilities, goods, or privileges in
10 accordance with this section shall not create any civil claim or cause of action or result in any state
11 action to penalize or withhold benefits from such person. Nothing in this section shall prohibit
12 marriage based on race, ethnicity, or skin color.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1264

BILL TITLE: establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.

DATE: January 24, 2012

LOB ROOM: 208 **Time Public Hearing Called to Order:** 9:44 am

Time Adjourned: 10:29 am

(please circle if present)

Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Wald, Potts, Weber and Watrous

Bill Sponsors: Rep. Bergevin, Hills 17; Rep. Duarte, Rock 1; Rep. Sapareto, Rock 5

TESTIMONY

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

***Rep. Bergevin, sponsor**

Introduced the bill. Business discrimination bill. Conscious or religious faith can exclude one from providing services.

***Rep. Cynthia Chase - opposes**

Read from written testimony.

***Bridget Hansel, representing St James Church in Keene, NH - opposes**

"Whites only"! "Omit gays"

Claire Ebel, New Hampshire Civil Liberties Union - opposes

Mean-spirited bill. Not restricted to employers or employees. Applies to everyone; "Anyone" would be affected. Everyone will be discriminated against for religion, color and sex.

Kurt Whelper, representing self - supports

Government should not interfere with religious beliefs. As a photographer, I can "select" whom I want to be employed by. This only deals with marriages --- period.

Ed Butler, representing self - opposes

"Tolerance" should end with the church in gay marriages. Anyone else would be discriminating.

***Roberta Barry, PFLAG - opposes**

Could lead to bigotry, discrimination, "pick and choose" what laws to follow.

Respectfully submitted,


Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1264

BILL TITLE: establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.

DATE: {Type HEARING DATE here} 1/24/12

LOB ROOM: 208 Time Public Hearing Called to Order: {Time} 9:44

Time Adjourned: {Time} 10:29

(please circle if present)

Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Guda, LaCarne, McClarren, Murphy, Palmer, Peterson, Wal, Potter, Weber and Watrous.

Bill Sponsors: Rep. Bergevin, Hills 17; Rep. Duarte, Rock 1; Rep. Sapareto, Rock 5

TESTIMONY

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

* Rep. Bergevin - business discrimination bill. Conscience or religious faith can exclude one from providing services

* Rep Chase - (opp) read written testimony

* Bridget Havel - (o) "whites" only! "omit gays"

* Claire Ebel - (o) mean spirited bill Not restricted to employers or employees, applies to everyone, anyone would be affected. Everyone will be discriminated against for religion, color, sex.

Kurt Welper (o) Govt shall not exercise interfere with religious believes. As a photographer I can "select" who I want to be employed by. This only deals with marriages period.

[Signature]

Lenette M. Peterson, Clerk

Ed Butler (o) "tolerance" should end w/ the church in gay marriages. Anyone else would be discriminating.

* Roberta Barry - (o) could lead to bigotry, discrimination "pick and choose" what laws to follow.

Testimony

JA
January 23, 2012

To: Members of the House Judiciary Committee
And, Rep. Bergervin, Rep. Duarte, and Rep. Sapareto, sponsors of
HB. 1264

From: Roberta L. Barry
170 Jordan Rd.
Keene, N.H. 03431

Re: HB 1264

While you may believe this bill is protecting Freedom of Religion and certain churches from marrying certain minorities, it is the phrase "Conscience in Marriage" that is a slippery slope.

Such language in a law could lead to ridiculous consequences and all kinds of bigotry - refusal to marry or provide any services to interracial couples, refusal to marry a Christian and a Jewish person, refusal to marry couples who are handicapped, refusal to marry couples who are no longer of child bearing age.

It appears you are trying to legislate that people can pick and choose what laws to follow according to their **conscience**. If you legislate that these actions pertaining to marriage are ok, then where does it stop?

Will we be able to one day say, "It's against my conscience to pay property taxes, get a drivers license, pay for my portion of incarcerating those who are a danger to us?"

A civilized society is one that not only tolerates differences among people, but strives to learn about and value those differences. It appears many in this legislative body want to regress to an era when everyone had better follow the edict(s) of one fanatic. I wonder if any of you know your history – ever heard of the Inquisition or Hitler?

I fear our moto will evolve into, "live my way, or die". This is as shameful a proposal as the other bills you considered and passed last week.

Roberta L. Barry

457:37. Affirmation of Freedom of Religion in Marriage.

Each religious organization, association, or society has exclusive control over its own religious doctrine, policy, teachings, and beliefs regarding who may marry within their faith.

I. Members of the clergy as described in RSA 457:31 or other persons otherwise authorized under law to solemnize a marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion protected by the First Amendment to the United States Constitution or by part I, article 5 of the New Hampshire constitution.

II. No 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, shall be required to participate in a ceremony solemnizing marriage in violation of the religious beliefs of such organization, association, or society.

III. Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with 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, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of his or her religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this section shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from such religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with 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.

IV. The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members pursuant to RSA 418:5, and shall not require a fraternal benefit society that has been established and is operating for charitable or educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religion as guaranteed by the First Amendment of the United States Constitution and part I, article 5 of the New Hampshire constitution.

V. Nothing in this chapter shall be deemed or construed to limit the protections and exemptions provided to religious organizations under RSA 354-A:18.

TESTIMONY on HB 1264

January 24, 2012

Representative Cynthia Chase, Keene

Cheshire Three

1. Thank you Mr. Chairman for taking my testimony.

My name is Cynthia Chase. I represent Keene, which is Cheshire County District 3.

2. In October of last year, I was privileged to participate in a trip to Washington DC to visit the National Holocaust Memorial Museum. The trip was sponsored by the Cohen Center at Keene State College for community leaders. I grew up in Providence, RI with classmates who lost family members in the Holocaust. I clearly remember grumbling to my friend Carrie that Thanksgiving would “just be a bunch old relatives” gathered at our house. Carrie, who might have been pushing 5’ tall, looked at me and said that she would give anything for her grandparents to come for Thanksgiving. They had been killed in Auchwitz shortly after she was born in Providence. Lives can change for any of us in a moment. This was such a moment for me. I never saw life in quite the same way again. That experience, along with a number of similar experiences makes me a **Witness**. I will go to the grave bearing witness to what I have seen and been

told by many who have personally experienced the Holocaust. The engraving over the entrance of the museum is a quote from Isaiah “ **“You are my Witnesses.”**

“When I read this bill, I knew I **had to speak up and speak out** against any attempts to legalize discrimination against any segment of American society. This bill is the first step on a slippery slope similar to what began to appear in Germany in 1933 and became German policy with the Nuremberg Race Laws enacted in 1935. **Legalizing discrimination** whether based on political convictions, personal prejudices or religious convictions **is morally wrong**. It gives permission to a society to do things to those perceived as different or **“OTHER”** that no socially responsible society should ever countenance. It **codifies** discrimination!”

For those of you not familiar with the development of anti-Semitism in Nazi Germany, permit me to give you a handout from the Holocaust Encyclopedia, which gives some examples of anti-Semitic Legislation passed in various legislative bodies in Germany between 1933 and 1939. I will not read them too you, but will ask that as you read them for yourselves, please substitute the word **“Gays”** for the word **“Jews.”** Please note that

some of these laws were passed between 1933 and September 15, 1935, which is the date of the promulgation of the Nuremberg Laws.

Governments at every level within Germany were making such laws as HB 1264 several years before the Nazi Party made anti-Semitism a national policy.

The analysis section of HB 1264 says:

“This bill permits an individual to choose not to provide accommodations, goods or services for a marriage if doing so would violate his or her conscience or religious faith.”

This bill seems to be turning itself inside out trying to avoid using the word “Gay.” In no language of this bill does it say specifically that it is targeted at the gay community but it does give permission to individuals to discriminate against any **couple** in providing services. If the draft added the word “ceremony” or “celebration” after “marriage” it could apply only to the marriage support industry but it does not say that. It gives license to discriminate. It is a distraction from what we should be doing to improve the economy of our state. This proposed legislation does not protect anyone. It merely gives permission to our weaker selves to discriminate against

people who are different, those very people most in need of our protection,
not our retribution.

Kofi Annan, United Nations Secretary-General said the following in 2004. I
have changed the word “Anti-Semitism” to “Discrimination”.

“The rise of **discrimination** anywhere is a threat to people
everywhere. Thus, in fighting **discrimination** we fight for the future of **all**
humanity.”

Thank you for your time and attention.

(WAIT FOR QUESTIONS)

Members of the Committee, I am here today representing the Social Justice Ministry of St James Church in Keene. the church of Native son and civil rights hero, Jonathan Daniels. An Episcopalian Seminarian who went down to Alabama during the Civil Rights movement to register African American voters and who was shot and killed by a white store owner while saving the life of Daniels' co worker, an african american teenager Ruby Sales. Their crime?- trying to buy a coke on a hot day at a whites only store.

I am here today to express my opposition to HB 1264. When I first received a copy of this proposed bill last week, my first reaction was " Is this legal?" I read it to my husband and his comment was "Whites only"., referring to signs prevalent in the South prior to 1964. We both realized that had this bill been into effect 2 years ago, it would have had direct implications for our own family.

I have two daughters who were married in this state. One daughter is gay. This bill, in effect ,is saying that the local caterers and restaurant that provided for my straight daughter's wedding would have the right to refuse these same services for my gay daughter's- based on religious or moral grounds. Because she is gay, she is somehow less deserving than her sister?. To me, this sounds discriminatory, and unconstitutional.

HB1264 bill goes against the core tenets of civil rights in this country. It made me think of what happened after the civil war when many states in the south began passing Black Codes . These were specific laws that limited the rights of African-Americans and resulted in creating SEPARATE schools, houses of worship, stores, restaurants-a complete societal divide that made blacks second class citizens. There were also laws banning interracial marriage.The white law makers, often quoting scripture , defended these laws on moral and religious grounds, similar to the intentions in the proposed bill before us.

Over time people began to understand the insidious and destructive nature of the codification of separate but equal. The civil rights movement was born. And the ^{civil} Civil Rights Act of 1964, among other things, ended unequal application of the law in the workplace and in Facilities that served the general public, including theaters,

restaurants, inns, parks and restrooms. It said all citizens had equal protection under the law. 3 years later, the Us Supreme court ruled in a landmark case on interracial marriage-Loving vs Virginia and said" quote- " under our constitution, the freedom to marry or not marry a person is a right of the individual not an indulgence by a state to favor a certain group of citizens over another."end quote. While our constitution guarantees the freedom to exercise our individual religious convictions, it equally prohibits us from forcing our beliefs on others. This bill is dangerous, It would be taking us backwards to a time when many people believed not all people were created equal. A time that allowed discrimination against a minority based on one's personal religious and moral beliefs. Let's not go there again.

My husband and I brought up our 4 children believing that they could all have the same opportunities, choices and rights regardless of their gender or sexual orientation. We treated them equally. When the Marriage Equality Law passed 2 years ago, we celebrated our gay daughter's marriage with a caterer, and a facility, of her choice . I hope we can keep it that way.

Bridget Hensel
b1 Bradford
Kent NH 03431

4

CHAPTER 354-A STATE COMMISSION FOR HUMAN RIGHTS

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. 1997, 108:11, eff. Jan. 1, 1998.

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. 1997, 108:13, eff. Jan. 1, 1998.

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. 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.

HOLOCAUST ENCYCLOPEDIA

EXAMPLES OF ANTISEMITIC LEGISLATION, 1933-1939

During the first six years of Hitler's dictatorship, government at every level – Reich, state and municipal – adopted hundreds of laws, decrees, directives, guidelines, and regulations that increasingly restricted the civil and human rights of the Jews in Germany. Here are examples of anti-Jewish legislation in Nazi Germany, 1933-1939:

1933

March 31

Decree of the Berlin city commissioner for health suspends Jewish doctors from the city's charity services.

April 7

Law for the Reestablishment of the Professional Civil Service removes Jews from government service.

April 7

Law on the Admission to the Legal Profession forbids the admission of Jews to the bar.

April 25

Law against Overcrowding in Schools and Universities limits the number of Jewish students in public schools.

July 14

De-Naturalization Law revokes the citizenship of naturalized Jews and "undesirables."

October 4

Law on Editors bans Jews from editorial posts.

1935

May 21

Army law expels Jewish officers from the army.

September 15

Nazi leaders announce the Nuremberg Laws.

1936

January 11

Executive Order on the Reich Tax Law forbids Jews to serve as tax-consultants.

April 3

Reich Veterinarians Law expels Jews from the veterinary profession.

October 15

Reich Ministry of Education bans Jewish teachers from public schools.

1937

April 9

The Mayor of Berlin orders public schools not to admit Jewish children until further notice.

1938

January 5

Law on the Alteration of Family and Personal Names forbids Jews from changing their names.

February 5

Law on the Profession of Auctioneer excludes Jews from this occupation.

March 18

The Gun Law excludes Jewish gun merchants.

April 22

Decree against the Camouflage of Jewish Firms forbids changing the names of Jewish-owned businesses.

April 26

Order for the Disclosure of Jewish Assets requires Jews to report all property in excess of 5,000 reichsmarks.

July 11

Reich Ministry of the Interior bans Jews from health spas.

August 17

Executive Order on the Law on the Alteration of Family and Personal Names requires Jews to adopt an additional name: "Sara" for women and "Israel" for men.

October 3

Decree on the Confiscation of Jewish Property regulates the transfer of assets from Jews to non-Jewish Germans.

October 5

The Reich Interior Ministry invalidates all German passports held by Jews. Jews must surrender their old passports, which will become valid only after the letter "J" had been stamped on them.

November 12

Decree on the Exclusion of Jews from German Economic Life closes all Jewish-owned businesses.

November 15

Reich Ministry of Education expels all Jewish children from public schools.

November 28

Reich Ministry of Interior restricts the freedom of movement of Jews.

November 29

The Reich Interior Ministry forbids Jews to keep carrier pigeons.

December 14

An Executive Order on the Law on the Organization of National Work cancels all state contracts held with Jewish-owned firms.

December 21

Law on Midwives bans all Jews from the occupation.

1939

February 21

Decree Concerning the Surrender of Precious Metals and Stones in Jewish Ownership.

August 1

The President of the German Lottery forbids the sale of lottery tickets to Jews.

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ENCYCLOPEDIA LAST UPDATED: JANUARY 6, 2011



30 Winter Street
Suite 800
Boston, MA 0210
P 617.426.1350
F 617.426.3594
www.glad.org

January 23, 2012

Chairman Robert Rowe
House Judiciary Committee, Room 208
Legislative Office Building
33 North State Street, Concord, New Hampshire 03301

Dear Chairman Rowe and Committee Members:

Enclosed please find eighteen (18) copies of the statement in opposition to House Bill 1264 as filed by Lee Swislow, Executive Director of Gay & Lesbian Advocates & Defenders (GLAD). Thank you for your consideration and attention to this matter.

Sincerely,

Lee Swislow



**Statement by Lee Swislow,
 Executive Director, Gay & Lesbian Advocates & Defenders (GLAD),
 Before the House Judiciary Committee Opposing House Bill 1264,
 An Act Establishing A Religious Exemption For Individuals Who Do Not Wish To Provide
 Accommodations, Goods, Or Services For Marriages**

Dear Honorable Chairman Rowe and Members of the Committee:

I am the executive director at Gay & Lesbian Advocates & Defenders (GLAD), a New England-wide public interest legal organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression. I submit this testimony in opposition to HB 1264, which goes further than any other state toward legalizing faith-based discrimination against all people, not just gay individuals.

Instead of creating more religious freedom and tolerance, this bill would upend settled principles in how we as a country properly handle the relationship between religious views and non-discrimination laws. We respect people's religious beliefs in every way that we can, but we also expect, for example, that all people who engage in commercial businesses welcome all comers regardless of how the business owner assesses a customer as a matter of their religious principles. **As the New Hampshire Supreme Court has stated: "If all men were to take the position that individual opinions are equivalent to rights, law would be replaced by anarchy."** *State v. Drew*, 192 A. 629, 632 (1937). Finally, this bill will encourage, not prevent, litigation against businesses, and create potential conflicts between an employer and its employees.

1. This bill goes beyond the issue of marriage rights for gay couples and condones faith-based discrimination in all forms, including on the basis of religion, race, and gender.

This bill is not specific to religious objections to anti-discrimination protections for gay people but to all people. Faith-based discrimination based upon many different characteristics has always been in existence and continues today. For example, just last month, the Guinare Free Will Baptist Church in Kentucky resolved that its church "does not condone interracial marriage."¹ Bob Jones University in South Carolina, whose founder has also called Catholicism a cult, only ended its ban on interracial dating on campus in 2000.² And while the U.S. Supreme Court ultimately found Virginia's anti-miscegenation law unconstitutional in *Loving v. Virginia*, 388 U.S. 1 (1967), earlier in that case, the trial court had upheld Virginia's law on religious grounds:

"Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for

¹ "Kentucky Church Bans Interracial Couple," Christina Ng, ABC News (December 1, 2011), available at <http://abcnews.go.com/US/kentucky-church-bans-interracial-couples/story?id=15065204>.

² "Bob Jones University ends ban on interracial dating," CNN (March 20, 2000), available at http://articles.cnn.com/2000-03-04/us/bob.jones_1_racist-school-ends-ban-bushs-visit?s=PM:US.

such marriages. The fact that he separated the races shows that he did not intend for the races to mix.”³

Similarly, faith-based discrimination has existed against Catholics and other religious minorities, as well as women.

However, despite this long history, we have never before allowed individuals, separate from any religious institution, to ignore the law simply because they do not agree on religious grounds. This bill would go down a path of unintended consequences. Should a Protestant baker be allowed to refuse to provide a wedding cake for a Catholic wedding? Do we want people from so-called “liberal” denominations to treat people differently if they are from a more “conservative” religious tradition? Do we want people to be able to refuse to sell their home to a couple because the wife is not obedient and subservient to her husband as some faiths require, or because they are divorced and remarried? The answer is obviously no, and yet HB 1264 would allow exactly these scenarios to happen in New Hampshire.

Let’s not forget that opponents in the 1960s used segregationist theology to oppose the Civil Rights Act. Opponents of women’s rights made biblical arguments regarding why women should be subservient to men. Religious objections to civil rights are not anything new. We should not undermine anti-discrimination protections in New Hampshire—the idea that all people should have equal opportunities in life—in order to accommodate each and every religious objection a person might have.

2. This bill would upend settled principles that balance respect for religious beliefs with respect for the rule of law in our society.

Currently, New Hampshire’s statutes already adequately protect the religious liberties of religious institutions and their employees. No church, including their individual employees, can be forced to participate in or provide services related to the solemnization, celebration, or promotion of any marriages. NH RSA § 457:37. Religions are still able to determine their own requirements for solemnization and religious marriage ceremonies, as they do now in refusing to marry couples of different religions, or people who have been divorced. *Id.* And no church or church employee is required to participate in the solemnization, celebration, or promotion of any marriage that violates his or her religious beliefs. *Id.*

Moreover, the state and federal constitutional right of free exercise of religion—whether under the federal or state constitution—has for our country’s entire history provided the body of law to balance the importance of religious beliefs against the importance of day-to-day engagement in an increasingly pluralistic civil society.

Yet, in our civil society, we have never given license to individuals, unaffiliated with a religious institution, to ignore the same rules that everyone else must follow. That is why, for example, the Amish have to pay Social Security taxes even though they oppose them on religious grounds. **As Justice Scalia, a well-known man of faith, wrote for the Supreme Court in a case about free exercise of religion: “To make an individual’s obligation to obey such a law contingent upon the law’s coincidence with his religious beliefs . . . permitting him, by virtue of his beliefs, ‘to become a law unto himself’ . . . contradicts both constitutional tradition and common sense.”** *Smith v. Dept. of Hum. Resources*, 494 U.S. 872, 879 (1990).

In New Hampshire, the valid and neutral laws of our state prohibit discrimination against gay and lesbian individuals when it comes to jobs, housing, or patronizing business for products or services.

³ See *Loving v. Virginia*, 388 U.S. 1, 2 (1967) (quoting trial court decision).

That's our state Human Rights Act. While some may disagree with whether gay couples should be able to marry, there should be no disagreement as to the equal application of our anti-discrimination laws. **As the New Hampshire Supreme Court has stated: "If all men were to take the position that individual opinions are equivalent to rights, law would be replaced by anarchy."** *State v. Drew*, 192 A. 629, 632 (1937).

There is wide variation amongst religions on the subject of marriage. Some support allowing gay couples to marry, and some do not. Some allow remarriage after divorce, and others forbid it. Given that diversity, why would New Hampshire want to hand out permission slips to each individual to discriminate against their fellow citizens for religious reasons? Let's not open this Pandora's box. Instead, let's preserve what has worked in New Hampshire for centuries.

3. This bill will encourage, not decrease, litigation against businesses.

This bill will not prevent litigation. Instead, this bill relies upon a vague standard (e.g. a person's "conscience or religious faith") that will still require some form of fact-finding by a court to determine liability. Indeed, under analogous free exercise case law, the question of whether a religious belief is sincerely held by the person asserting constitutional protection is a fact-specific determination that has to be resolved by the court. *See, e.g., Equal Employment Opportunity Comm'n v. Union Independiente De La Autoridad De Acueductos Y Alcantarillados De Puerto Rico*, 279 F.3d 49, 56 (1st Cir. 2002) (Civil Rights Act Title VII religious discrimination challenge to mandatory union membership policy) (reversing summary judgment grant for plaintiff due to disputed facts regarding sincerity of employee's belief); *Sherbert v. Verner*, 374 US 398, 402 (1970) (relying on employee's testimony at trial to establish that her belief is sincere for purposes of Free Exercise claim).

Instead, in order for businesses to avoid litigation, they require clear notice and certainty as to what will cause liability. This bill lacks both. Instead, it actually invites these entities to discriminate, with the false expectation that they will be protected from litigation. This combination is a recipe for increased litigation against businesses and employers.

Finally, the proposed bill sets up a potential conflict between employees with religious objections and their employers that do not share that religious objection. Can an individual employee of a catering company refuse to work a shift for an interracial wedding based upon his religious beliefs, even if that leaves the catering company short-staffed? Could the employer then fire the employee for failing to show up at his job, and could that employee then sue his employer for religious discrimination in employment? These are the types of situations, created by HB 1264, that could create a nightmare for businesses.

January 24, 2012

Submitted by:



Lee Swislow
Executive Director
Gay & Lesbian Advocates & Defenders
lswislow@glad.org
(617) 426-1350



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EQUAL PROTECTION

Overview Resources

EQUAL PROTECTION: AN OVERVIEW

The Equal Protection Clause of the 14th amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. See U.S. Const. amend. XIV. In other words, the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. A violation would occur, for example, if a state prohibited an individual from entering into an employment contract because he or she was a member of a particular race. The equal protection clause is not intended to provide "equality" among individuals or classes but only "equal application" of the laws. The result, therefore, of a law is not relevant so long as there is no discrimination in its application. By denying states the ability to discriminate, the equal protection clause of the Constitution is crucial to the protection of civil rights. See Civil Rights.

Generally, the question of whether the equal protection clause has been violated arises when a state grants a particular class of individuals the right to engage in an activity yet denies other individuals the same right. There is no clear rule for deciding when a classification is unconstitutional. The Supreme Court has dictated the application of different tests depending on the type of classification and its effect on fundamental rights. Traditionally, the Court finds a state classification constitutional if it has "a rational basis" to a "legitimate state purpose." The Supreme Court, however, has applied more stringent analysis in certain cases. It will "strictly scrutinize" a distinction when it embodies a "suspect classification." In order for a classification to be subject to strict scrutiny, it must be shown that the state law or its administration is meant to discriminate. Usually, if a purpose to discriminate is found the classification will be strictly scrutinized if it is based on race, national origin, or, in some situations, non U.S. citizenship (the suspect classes). In order for a classification to be found permissible under this test it must be proven, by the state, that there is a compelling interest to the law and that the classification is necessary to further that interest. The Court will also apply a strict scrutiny test if the classification interferes with fundamental rights such as first amendment rights, the right to privacy, or the right to travel. The Supreme Court also requires states to show more than a rational basis (though it does not apply the strictly scrutiny test) for classifications based on gender or a child's status as illegitimate.

The 14th amendment is not by its terms applicable to the federal government. Actions by the federal government, however, that classify individuals in a discriminatory manner will, under similar circumstances, violate the due process of the fifth amendment. See U.S. Const. amend. V.

See constitutional clauses.

DEFINITION FROM NOLO'S PLAIN-ENGLISH LAW DICTIONARY

The right, guaranteed by the Fourteenth Amendment to the U.S. Constitution, to be treated the same, legally, as others in the same situation. If a law discriminates between one group of people and another, the government must have a rational basis for doing so. A law that discriminates on the basis of a suspect classification -- that is, it makes a distinction based on race, gender, or another trait that has historically resulted in discriminatory treatment -- is constitutional only if there is a very compelling reason for the distinction.

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UNITED STATES CONSTITUTION

14TH AMENDMENT

Amendment 14 - Citizenship Rights. Ratified 7/9/1868. Note History

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

NEW HAMPSHIRE CONSTITUTION

PART I

[Art.] 2. [Natural Rights.] All men have certain 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. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

June 2, 1784

Amended 1974 adding sentence to prohibit discrimination.

**TITLE I
THE STATE AND ITS GOVERNMENT**

**CHAPTER 21
STATUTORY CONSTRUCTION**

Section 21:49

21:49 Sexual Orientation. – "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 the basic rights afforded under New Hampshire law.

Source. 1997, 108:2, eff. Jan. 1, 1998.

TITLE I THE STATE AND ITS GOVERNMENT

CHAPTER 21-I DEPARTMENT OF ADMINISTRATIVE SERVICES

Classified Employees

Section 21-I:52

21-I:52 Prohibitions; Penalty. –

[Paragraph I effective until January 1, 2012; see also paragraph I set out below.]

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religious beliefs or affiliations, age, sex, or race. In addition, no person shall have any such employment action taken on account of such person's sexual orientation. Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

[Paragraph I effective January 1, 2012; see also paragraph I set out above.]

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religion, religious beliefs or affiliations, age, sex, sexual orientation, national origin, or race. Additionally, except as provided in paragraph I-a, there shall be no preferential treatment or discrimination in recruiting, hiring, or promotion based on race, sex, sexual orientation, national origin, religion, or religious beliefs. Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any

official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

[Paragraph I-a effective January 1, 2012.]

I-a. Notwithstanding the prohibition on preferential treatment or discrimination in paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

II. If any person in state service shall willfully violate this section, his position of service with the state shall be declared vacant by the governor and council.

Source. 1986, 12:1. 1990, 261:3, eff. July 1, 1990. 1997, 108:4, eff. Jan. 1, 1998. 2011, 227:1, eff. Jan. 1, 2012.

**TITLE XXXI
TRADE AND COMMERCE**

**CHAPTER 354-B
CIVIL RIGHTS ACT**

Section 354-B:1

354-B:1 Civil Rights Enforcement. –

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

II. It shall be unlawful for any person to interfere or attempt to interfere with the rights secured by this chapter.

Source. 1999, 325:1, eff. Jan. 1, 2000.

**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. 1997, 108:8, eff. Jan. 1, 1998.

**TITLE XXXI
TRADE AND COMMERCE**

**CHAPTER 354-A
STATE COMMISSION FOR HUMAN RIGHTS**

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. 1997, 108:9. 2006, 181:1, eff. Jan. 1, 2007; 274:1, eff. July 1, 2006.

**TITLE XXXI
TRADE AND COMMERCE**

**CHAPTER 354-A
STATE COMMISSION FOR HUMAN RIGHTS**

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. 1997, 108:10. 2000, 277:2, eff. June 16, 2000.

**TITLE XXXI
TRADE AND COMMERCE**

**CHAPTER 354-A
STATE COMMISSION FOR HUMAN RIGHTS**

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. 1997, 108:11, eff. Jan. 1, 1998.

**TITLE XXXI
TRADE AND COMMERCE**

**CHAPTER 354-A
STATE COMMISSION FOR HUMAN RIGHTS**

Equal Employment Opportunity

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. 1997, 108:12. 2006, 181:2, eff. Jan. 1, 2007.

TITLE XLIII

DOMESTIC RELATIONS

CHAPTER 457 MARRIAGES

HB 1264

Relationship

Section 457:1

457:1 Purpose and Intent. – The purpose of this chapter is to affirm the right of 2 individuals desiring to marry and who otherwise meet the eligibility requirements of this chapter to have their marriage solemnized in a religious or civil ceremony in accordance with the provisions of this chapter.

Source. RS 147:1. CS 156:1. GS 161:1. 1869, 9:1. GL 180:1. PS 174:1. PL 286:1. RL 338:1. RSA 457:1. 1987, 218:1, eff. July 17, 1987. 2009, 59:1, eff. Jan. 1, 2010.

Section 457:1-a

457:1-a Equal Access to Marriage. – Marriage is the legally recognized union of 2 people. Any person who otherwise meets the eligibility requirements of this chapter may marry any other eligible person regardless of gender. Each party to a marriage shall be designated "bride," "groom," or "spouse."

Source. 2009, 59:1, eff. Jan. 1, 2010.

Section 457:2

457:2 Marriages Prohibited. – No person shall marry his or her father, mother, father's brother, father's sister, mother's brother, mother's sister, son, daughter, brother, sister, son's son, son's daughter, daughter's son, daughter's daughter, brother's son, brother's daughter, sister's son, sister's daughter, father's brother's son, father's brother's daughter, mother's brother's son, mother's brother's daughter, father's sister's son, father's sister's daughter, mother's sister's son, or mother's sister's daughter. No person shall be allowed to be married to more than one person at any given time.

Source. RS 147:2. CS 156:2. GS 161:2. 1869, 9:2. GL 180:2. PS 174:2. PL 286:2. RL 338:2. RSA 457:2. 1965, 46:1. 1987, 218:2, eff. July 17, 1987. 2009, 59:1, eff. Jan. 1, 2010.

Section 457:3

457:3 Recognition of Out-of-State Marriages. – Every marriage legally contracted outside the state of New Hampshire, which would not be prohibited under RSA 457:2 if contracted in

New Hampshire, shall be recognized as valid in this state for all purposes if or once the contracting parties are or become permanent residents of this state subsequent to such marriage, and the issue of any such marriage shall be legitimate. Marriages legally contracted outside the state of New Hampshire which would be prohibited under RSA 457:2 if contracted in New Hampshire shall not be legally recognized in this state. Any marriage of New Hampshire residents recognized as valid in the state prior to the effective date of this section shall continue to be recognized as valid on or after the effective date of this section.

Source. RS 147:3. CS 156:3. GS 161:3. GL 180:3. PS 174:3. PL 286:3. RL 338:3. RSA 457:3. 1965, 252:1. 1973, 145:6. 2004, 100:1, eff. May 14, 2004. 2009, 59:1, eff. Jan. 1, 2010.

Age

Section 457:4

457:4 Marriageable. – No male below the age of 14 years and no female below the age of 13 years shall be capable of contracting a valid marriage that is entered into by one male and one female, and all marriages contracted by such persons shall be null and void. No male below the age of 18 and no female below the age of 18 shall be capable of contracting a valid marriage between persons of the same gender, and all marriages contracted by such persons shall be null and void.

Source. 1907, 80:1. PL 286:4. RL 338:4. 2009, 59:2, eff. Jan. 1, 2010.

Section 457:5

457:5 Of Consent. – The age of consent shall be in the male and in the female, 18 years. Any marriage contracted by a person below the age of consent, except as hereinafter provided, may in the discretion of the superior court be annulled at the suit of the party who at the time of contracting such marriage was below the age of consent, or at the suit of his or her parent or guardian, unless such party after arriving at such age shall have confirmed the marriage.

Source. 1907, 80:2. 1923, 108:1. PL 286:5. RL 338:5. RSA 457:5. 1973, 72:35, eff. June 3, 1973.

Section 457:5-a

457:5-a Petition for Annulment; Orders by Court. – In the event a petition for annulment is filed by the parent or guardian of a minor, as provided in RSA 457:5, the superior court is hereby authorized to make such orders as in the discretion of the court will protect the interest of the minor child, including but not limited to orders directing the minor child to return to its parents or guardian and such orders may be issued ex parte. The party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk. The request shall be filed with the clerk of court for the county in which the petition of annulment is filed.

Source. 1969, 375:1, eff. Aug. 31, 1969.

Section 457:6

[RSA 457:6 effective until January 1, 2012; see also RSA 457:6 set out below.]

457:6 Petition by Party Under Age. –

If special cause exists rendering desirable the marriage of a person resident in this state, or the marriage of a person who is a nonresident in this state who applies for permission to marry a resident in this state, either person being below the age of consent and above the ages specified in RSA 457:4, the parties desiring to contract such marriage, with the parent or guardian having the custody of such party below such age, if there be such parent or guardian, may apply in writing to a justice of the superior court, or to the judge of probate of the county in which one of them resides, for permission to contract such marriage. No waiver shall be granted to persons below the age of consent if both parties are nonresidents.

Section 457:6

[RSA 457:6 effective January 1, 2012; see also RSA 457:6 set out above.]

457:6 Petition by Party Under Age. –

If special cause exists rendering desirable the marriage of a person resident in this state, or the marriage of a person who is a nonresident in this state who applies for permission to marry a resident in this state, either person being below the age of consent and above the ages specified in RSA 457:4, the parties desiring to contract such marriage, with the parent or guardian having the custody of such party below such age, if there be such parent or guardian, may apply in writing to the judicial branch family division having jurisdiction in the location in which one of them resides, for permission to contract such marriage. No waiver shall be granted to persons below the age of consent if both parties are nonresidents.

Source. 1907, 80:3. PL 286:6. RL 338:6. RSA 457:6. 1965, 121:1. 1967, 319:1. 1987, 218:3, eff. July 17, 1987. 2011, 177:3, eff. Jan. 1, 2012.

Section 457:6-a

457:6-a Fee. – [Repealed 1998, 155:10, III, eff. July 8, 1998.]

Section 457:7

457:7 Granting of Permission. – Such justice or judge shall at once hear the parties, and, if satisfied that special cause exists making such marriage desirable, shall grant permission therefor, which shall be filed with the court and shall be reported to the division of vital records. The division shall note the fact of the granting of such permission upon the certificate and upon all copies thereof which are by law required to be kept.

Source. 1907, 80:3. 1917, 79:1. PL 286:7. RL 338:7. 1997, 325:16. 2003, 319:70, eff. July 1, 2003.

Section 457:8

457:8 Prohibitions. – No town clerk shall issue any certificate for the marriage of any person below the age of consent, and no magistrate or minister of religion shall solemnize the marriage of any such person, if such clerk, magistrate or minister knows or has reasonable cause to believe that such person is below such age, unless permission for such marriage has been given under this subdivision. No magistrate or minister of religion shall solemnize any marriage by proxy.

Source. 1907, 80:4. PL 286:8. RL 338:8. RSA 457:8. 1987, 218:4, eff. July 17, 1987.

Section 457:9

457:9 Penalty. – Any person violating any of the provisions of RSA 457:8, or any person knowingly making any false statement as to the age of any person, with intent to induce any clerk to issue a certificate for the marriage of any person below the age of consent, or to induce any magistrate or minister of religion to solemnize the marriage of any such person, shall be guilty of a misdemeanor.

Source. 1907, 80:5. PL 286:9. RL 338:9. RSA 457:9. 1973, 528:307, eff. Oct. 31, 1973, at 11:59 p.m.

Defective Persons**Section 457:10-16**

457:10 to 457:16 Repealed. – [Repealed 1975, 69:1, eff. June 6, 1975.]

Section 457:16-a-16-e

457:16-a to 457:16-e Repealed. – [Repealed 1959, ch. 99, eff. July 13, 1959.]

Diseased Persons**Section 457:17**

457:17 Marriage. – [Repealed 1986, 198:23, XLVI, eff. Aug. 2, 1986.]

Section 457:18

457:18 Duty of Physicians. – [Repealed 1986, 198:23, XLVII, eff. Aug. 2, 1986.]

Section 457:19

457:19 Notice to Division of Public Health Services. – [Repealed 1986, 198:23, XLVIII, eff. Aug. 2, 1986.]

Section 457:20

457:20 Certificate Not Issuable Without Division's Consent. – [Repealed 1986, 198:23, XLIX, eff. Aug. 2, 1986.]

Section 457:21

457:21 Penalty. – [Repealed 1986, 198:23, III, eff. Aug. 2, 1986.]

Documentation of Marriages**Section 457:22**

457:22 Completion of Marriage License Application. – All persons proposing to be joined in marriage within the state shall complete a marriage license application with all facts required by RSA 5-C:41 to be entered in any town clerk's office. The clerk shall record the application in a book to be kept for that purpose.

Source. RS 147:4. CS 156:4. 1854, 1518:1. GS 161:4. GL 180:4. PS 174:5. 1897, 18:1. PL 286:22. RL 338:22. 1949, 98:3. RSA 457:22. 1983, 291:1, I. 1995, 310:181. 1997, 325:18. 2003, 319:71, eff. July 1, 2003. 2005, 268:10, eff. Jan. 1, 2006.

Section 457:23**457:23 Requirements.** –

I. No marriage license shall be issued by any town or city clerk until the applicants have each provided for inspection the following documents:

- (a) Proof of age;
- (b) A certified copy of the final divorce decree, if either or both parties are divorced; and
- (c) A certified copy of the death record of spouse, if either or both parties are widowed.

II, III. [Repealed.]

Source. 1937, 186:1. RL 338:23. RSA 457:23. 1961, 222:1. 1965, 333:1. 1977, 277:1. 1979, 310:2. 1981, 95:2. 1988, 226:2; 262:6. 1995, 310:181, eff. Nov. 1, 1995. 2005, 261:6, eff. Sept. 20, 2005. 2011, 187:5, eff. Aug. 13, 2011.

Section 457:24

457:24 Penalty. – Any person violating the provisions of RSA 457:23 shall forfeit \$60 for each such offense.

Source. 1937, 186:1. RL 338:24.

Section 457:25

457:25 Confidential Report, Optional Destruction. – [Repealed 1981, 95:3, eff. June 19, 1981.]

Section 457:26

457:26 Marriage License. – The town clerk shall deliver to the parties a marriage license embodying the facts required in RSA 457:22, specifying the time when the application was entered, which license shall be delivered to the minister or magistrate who is to officiate, before the marriage is solemnized. The license shall be valid for not more than 90 days from the date of filing.

Source. RS 147:5. CS 156:5. 1854, 1518:2. GS 161:5. GL 180:5. PS 174:6. 1903, 93:1. 1905, 79:1. 1911, 173:1. PL 286:23. 1939, 52:1. RL 338:26. RSA 457:26. 1979, 45:2; 310:3. 1997, 325:19, eff. Aug. 22, 1997. 2006, 86:1, eff. July 4, 2006.

Section 457:27

457:27 Shortening Period. – [Repealed 2006, 86:5, eff. July 4, 2006.]

Section 457:28

457:28 Procedure. – The procedure upon such application shall be as provided in RSA 457:7.

Source. PL 286:25. RL 338:28.

Section 457:28-a

457:28-a Brochures Relative to Family Planning Services, Fetal Alcohol Syndrome, and Human Immunodeficiency Virus. – The town clerk shall make available to the public, in the office of the town clerk, a list of family planning agencies and services available in the state, the informational brochure relative to fetal alcohol syndrome prepared pursuant to RSA 132:2, XI, and the informational brochure relative to human immunodeficiency virus prepared pursuant to RSA 141-F:3, XIII. The department of health and human services shall supply each town clerk with a sufficient quantity of the brochures initially, to be resupplied upon the request of the town clerk.

Source. 1973, 132:1. 1983, 291:1, I, eff. July 1, 1985. 2005, 261:3, eff. Sept. 20, 2005.

Section 457:28-b

457:28-b Destruction of Records. – The clerk of the superior court and the clerk of the circuit court may destroy petitions by parties under age under RSA 457:6 and related documents after 5 years from the time of filing.

Source. 1981, 518:2, eff. Aug. 28, 1981. 2006, 86:3, eff. July 4, 2006. 2011, 88:20, eff. July 1, 2011.

Section 457:29

457:29 Marriage License Fee. – The fee for the marriage license shall be \$45 to be paid by the parties entering into the marriage. The clerk shall forward \$38 from each fee to the department of health and human services for the purposes of RSA 173-B:15. The clerk shall retain the remaining \$7 as the fee for making the records of notice, issuing the certificate of marriage, and forwarding the \$38 portion of the marriage license fee.

Source. RS 147:5. CS 156:5. 1854, 1518:2. GS 161:5. GL 180:5. PS 174:6. 1911, 173:1. PL 286:26. 1929, 54:1. RL 338:29. 1951, 92:1. RSA 457:29. 1973, 335:3. 1981, 223:1. 1989, 277:1. 1992, 289:8. 1993, 149:2. 1999, 240:5, eff. Jan. 1, 2000. 2010, Sp. Sess., 1:68, eff. June 10, 2010. 2011, 224:320, eff. July 1, 2011.

Section 457:30

457:30 Marriage Outside the State. – [Repealed 1977, 530:8, eff. Sept. 13, 1977.]

Solemnization of Marriage

Section 457:31

457:31 Solemnization of Marriage. – A marriage may be solemnized in the following manner:

I. In a civil ceremony by a justice of the peace as commissioned by the state and by judges of the United States appointed pursuant to Article III of the United States Constitution, by bankruptcy judges appointed pursuant to Article I of the United States Constitution, or by United States magistrate judges appointed pursuant to federal law; or

II. In a religious ceremony by any minister of the gospel in the state who has been ordained according to the usage of his or her denomination, resides in the state, and is in regular standing with the denomination; by any member of the clergy who is not ordained but is engaged in the service of the religious body to which he or she belongs, and who resides in the state, after being licensed therefor by the secretary of state; or within his or her parish, by any minister residing out of the state, but having a pastoral charge wholly or partly in this state.

Source. RS 147:6. CS 156:6. 1861, 2484:1. GS 161:9. 1877, 57:1. GL 180:9. PS 174:8. 1919, 56:1. 1921, 79:1. PL 286:28. RL 338:31. RSA 457:31. 1969, 435:1. 1998, 294:1. 2001, 11:1, eff. April 24, 2001. 2006, 86:2, eff. July 4, 2006. 2009, 59:3, eff. Jan. 1, 2010.

Section 457:31-a

457:31-a Secretary of State. – The secretary of state may issue a license to an unordained clergy who is a resident of this state and who is a member of and engaged in the service of a religious body which is chartered by the state if he or she presents a certification from that body that he or she is in its service. Said license shall authorize the clergy to solemnize marriage in this state. The fee for such license shall be \$5.

Source. 1969, 435:2. 1975, 81:1, eff. June 14, 1975. 2006, 86:2, eff. July 4, 2006.

Section 457:31-b

457:31-b Solemnization of Marriage; Applicability. –

I. Nothing contained in this chapter shall affect the right of Jewish Rabbis residing in this state, or of the people called Friends or Quakers, to solemnize marriages in the way usually practiced among them, and all marriages so solemnized shall be valid. Jewish Rabbis residing out of the state may obtain a special license as provided by RSA 457:32.

II. Nothing in this chapter shall be construed to prohibit a person authorized to solemnize a marriage in a religious ceremony from solemnizing a marriage in a civil ceremony.

Source. 2009, 60:6, eff. Jan. 1, 2010 at 12:01 a.m.

Section 457:32

457:32 Special Commission. – The secretary of state may issue a special license to an ordained or non-ordained minister residing out of the state, or to an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, authorizing him or her in a special case to marry a couple within the state. In the case of an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, the secretary of state may require the submission of a copy of a valid commission or other indicia of authority to marry in the individual's state of residence as proof of existence of that authority. The names and residences of the couple proposed to be married in such special case shall be stated in the license, and no power shall be conferred to marry any other parties than those named therein. The fee for such license shall be \$25. The secretary of state shall keep a permanent record of all such special licenses, which record shall contain the names and residences of the couple to be married and the name and residence of the minister to whom the license is issued.

Source. RS 147:6. CS 156:6. 1861, 2484:1. GS 161:9. 1877, 57:1. GL 180:9. PS 174:8. 1919, 56:1. 1921, 79:1. 1925, 27:1. PL 286:29. RL 338:32. 2000, 75:1. 2003, 319:20, eff. July 1, 2003.

Section 457:32-a

457:32-a Judges of the United States. – The secretary of state may issue a special license to a judge of the United States residing in this state who is appointed pursuant to Article III of the United States Constitution, to a judge of the United States Bankruptcy Court residing in this state and appointed pursuant to Article I of the United States Constitution, or to a United States magistrate judge residing in this state and appointed pursuant to federal law, to marry a couple within the state. There shall be a fee of \$25 for each such license, and the secretary of state shall maintain a record of all such special licenses issued. A copy of the marriage license of the couple proposed to be married shall be filed with the secretary of state who shall maintain a permanent record of all such marriage licenses and the name and residence of the judge or magistrate performing the ceremony.

Source. 1998, 294:2. 2001, 11:2, eff. April 24, 2001.

Section 457:33

457:33 Fee for Solemnizing. – The persons joined in marriage by a minister or justice of the peace shall pay the minister or justice a minimum of \$5.

Source. RS 147:7. CS 156:7. GS 161:10. GL 180:10. PS 174:9. PL 286:30. RL 338:33. RSA 457:33. 1969, 244:2. 1988, 121:13, eff. Oct. 1, 1988.

Section 457:34

457:34 Penalty for Solemnization Without Valid Certificate. – If a minister or justice of the peace shall join any persons in marriage without having first received a certificate of the town clerk, or shall join any persons in marriage with a certificate which he knows to be invalid, he shall forfeit for each offense \$60.

Source. RS 147:12. CS 156:9. 1854, 1518:5. GS 161:8. GL 180:8. PS 174:10. PL 286:31. 1939, 52:2. RL 338:34.

Section 457:35

457:35 Penalty for Solemnization by Unauthorized Person. – If a person not authorized by this chapter to solemnize marriages shall join any persons in marriage, with or without a certificate, he shall be guilty of a misdemeanor.

Source. RS 147:13. CS 156:10. GS 161:11. GL 180:11. PS 174:11. PL 286:32. RL 338:35. RSA 457:35. 1973, 529:113, eff. Oct. 31, 1973 at 11:59 p.m.

Section 457:36

457:36 Effect of Informality. – No marriage solemnized before a person professing to be a justice of the peace or minister of the gospel shall be void, nor shall its validity be affected on account of want of jurisdiction or authority in such supposed justice or minister, or on account of any omission or informality in the certificate of intention of marriage, if the marriage is in other respects lawful and has been consummated with the belief on the part of either of the parties thereto that they were lawfully married.

Source. RS 147:15. CS 156:12. GS 161:13. GL 180:13. PS 174:12. PL 286:33. RL 338:36.

Section 457:37

457:37 Affirmation of Freedom of Religion in Marriage. – Each religious organization, association, or society has exclusive control over its own religious doctrine, policy, teachings, and beliefs regarding who may marry within their faith.

I. Members of the clergy as described in RSA 457:31 or other persons otherwise authorized under law to solemnize a marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion protected by the First Amendment to the United States Constitution or by part I, article 5 of the New Hampshire constitution.

II. No 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, shall be required to participate in a ceremony solemnizing marriage in violation of the religious beliefs of such organization, association, or society.

III. Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with 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, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of his or her religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this section shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from such religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with 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.

IV. The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members pursuant to RSA 418:5, and shall not require a fraternal benefit society that has been established and is operating for charitable or educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religion as guaranteed by the First Amendment of the United States Constitution and part I, article 5 of the New Hampshire constitution.

V. Nothing in this chapter shall be deemed or construed to limit the protections and exemptions provided to religious organizations under RSA 354-A:18.

Source. RS 147:8. CS 156:8. 1854, 1518:4. GS 161:7. GL 180:7. PS 174:13. PL 286:34. 1927, 45:1. RL 338:37. RSA 457:37. 1992, 243:2, eff. July 12, 1992. 2009, 60:7, eff. Jan. 1, 2010 at 12:01. a.m.; 61:1, 2, eff. Jan. 1, 2010 at 12:02 a.m.

Proof of Marriage

Section 457:38

457:38 Certified Copy of Record. – A copy of the record of a marriage, certified by a city or town clerk or by the registrar of vital records, shall be received in all courts and places as evidence of the fact of the marriage.

Source. RS 147:14. CS 156:11. GS 161:12. GL 180:12. PS 174:14. PL 286:35. RL 338:38. RSA 457:38. 1981, 160:5. 2003, 319:72, eff. July 1, 2003.

Section 457:39

457:39 Cohabitation, etc. – Persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of 3 years, and until the decease of one of them, shall thereafter be deemed to have been legally married.

Source. RS 149:11. CS 158:19. GS 161:16. GL 180:16. PS 174:15. PL 286:36. RL 338:39.

Section 457:40

457:40 In Civil Actions. – In all civil actions, except actions for criminal conversation, evidence of acknowledgment, cohabitation, and reputation is competent proof of marriage.

Source. GS 161:17. GL 180:17. PS 174:16. PL 286:37. RL 338:40.

Section 457:41

457:41 In Criminal Cases. – In actions for criminal conversation, and in indictments for adultery, bigamy, and the like, there must be proof of a marriage in fact.

Source. GS 161:18. GL 180:18. PS 174:17. PL 286:38. RL 338:41.

Legitimation of Children

Section 457:42

457:42 Marriage of Parents. – Where the parents of children born before marriage afterwards intermarry, and recognize such children as their own, such children shall be legitimate and shall inherit equally with their other children under the statute of distribution.

Source. 1860, 2343:1. GS 161:15. GL 180:15. PS 174:18. PL 286:39. RL 338:42.

Uniform Marriage Recognition Law

Section 457:43

457:43 Residents. – If any person residing and intending to continue to reside in this state is prohibited from contracting marriage under the laws of this state and goes into another jurisdiction and there contracts a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state, with the same effect as though such prohibited marriage had been entered into in this state.

Source. 1979, 45:1, eff. June 10, 1979.

Section 457:44

457:44 Nonresidents. – No marriage shall be contracted in this state by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this state in violation

hereof shall be null and void.

Source. 1979, 45:1, eff. June 10, 1979.

Civil Union Recognition; Obtaining Legal Status of Marriage

Section 457:45

457:45 Civil Union Recognition. – A civil union legally contracted outside of New Hampshire shall be recognized as a marriage in this state, provided that the relationship does not violate the prohibitions of this chapter.

Source. 2009, 59:5, eff. Jan. 1, 2010.

Section 457:46

457:46 Obtaining Legal Status of Marriage. –

I. Notwithstanding the provisions of RSA 457-A, no new civil unions shall be established on or after January 1, 2010. Two consenting persons who are parties to a valid civil union entered into prior to January 1, 2010 pursuant to this chapter may apply and receive a marriage license and have such marriage solemnized pursuant to RSA 457, provided that the parties are otherwise eligible to marry under RSA 457 and the parties to the marriage are the same as the parties to the civil union. Such parties may also apply by January 1, 2011 to the clerk of the town or city in which their civil union is recorded to have their civil union legally designated and recorded as a marriage, without any additional requirements of payment of marriage licensing fees or solemnization contained in RSA 457, provided that such parties' civil union was not previously dissolved or annulled. Upon application, the parties shall be issued a marriage certificate, and such marriage certificate shall be recorded with the division of vital records administration. Any civil union shall be dissolved by operation of law by any marriage of the same parties to each other, as of the date of the marriage stated in the certificate.

II. Two persons who are parties to a civil union established pursuant to RSA 457-A that has not been dissolved or annulled by the parties or merged into a marriage in accordance with paragraph I by January 1, 2011 shall be deemed to be married under this chapter on January 1, 2011 and such civil union shall be merged into such marriage by operation of law on January 1, 2011.

Source. 2009, 59:5, eff. Jan. 1, 2010; 61:3, eff. Jan. 1, 2010 at 12:02 a.m.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION ON HOUSE BILL 1264

BILL TITLE: establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.

DATE: February 21, 2012

LOB ROOM: 208

Amendments:

Sponsor: Rep.

LS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep.

Seconded by Rep.

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

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

Moved by Rep. B. Palmer

Seconded by Rep. B. Murphy

Vote: 9-5 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Lenette M. Peterson Clerk

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION ON HOUSE BILL 1264

BILL TITLE: establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.

DATE: ~~(Type DATE)~~ 2.21.2012

LOB ROOM: 208

Amendments:

Sponsor: Rep. *Bergevin* OLS Document #: *09146*
Sponsor: Rep. *Souza* OLS Document #:
Sponsor: Rep. OLS Document #:

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

Moved by Rep. *Hopper*

Seconded by Rep.

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

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

Moved by Rep. *Palmer*

Seconded by Rep. *Murphy*

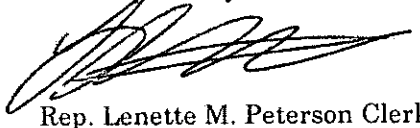
Vote: (Please attach record of roll call vote.) *9-5*

CONSENT CALENDAR VOTE: YES NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Lenette M. Peterson Clerk

Palmer
Miz - Hopper

JUDICIARY

Bill #: HB 1264 Title: _____

PH Date: 1/24/12 Exec Session Date: 2/21/12

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	✓	
Serg, Gregory M, V Chairman Hogan		✓
Souza, Kathleen F		✓
Hagan, Joseph M	✓	
Silva, Peter L		✓
Hopper, Gary S		✓
Andolina, Donald C	_____	_____
Giuda, J. Brandon	✓	
LaCasse, Paul D	_____	✓
McClarren, Donald B	_____	_____
Murphy, Brian JX	✓	
Palmer, Barry J	✓	
Peterson, Lenette M, Clerk	✓	
Wall, Janet G	✓	_____
Potter, Frances D	✓	
Weber, Lucy M	✓	
Watrous, Rick H	_____	_____
	9	5
TOTAL VOTE:		

Committee Report

REGULAR CALENDAR

February 22, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred HB 1264,

AN ACT establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages. Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Barry J. Palmer

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: JUDICIARY
Bill Number: HB 1264
Title: establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.
Date: February 22, 2012
Consent Calendar: NO
Recommendation: INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill would allow individuals and businesses the right not to accommodate customers when the accommodation would violate the person's conscience or religious faith. Although the purpose of the bill is well-intentioned, it was believed to be too far-reaching and probably unconstitutional. The bill would also run afoul of federal and New Hampshire anti-discrimination laws.

Vote 9-5

Rep. Barry J. Palmer
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB 1264, establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages. **INEXPEDIENT TO LEGISLATE.**
Rep. Barry J. Palmer for the Majority of JUDICIARY. This bill would allow individuals and businesses the right not to accommodate customers when the accommodation would violate the person's conscience or religious faith. Although the purpose of the bill is well-intentioned, it was believed to be too far-reaching and probably unconstitutional. The bill would also run afoul of federal and New Hampshire anti-discrimination laws. **Vote 9-5.**

Original: House Clerk
Cc: Committee Bill File

HB1264

This bill would allow individuals & businesses the right, not to accommodate customers, when the individuals or businesses object to based on the accommodation would contrary to their work violate the persons conscience or religious faith

Rep. Barry J. Palmer for the Majority of Judiciary: Although the purpose of the bill is ~~well~~ well-intentioned, it was believed to be too far-reaching and probably unconstitutional. The bill would also run afoul of federal and New Hampshire ~~anti-discrimination laws~~ ~~anti-discrimination laws~~ anti-discrimination laws.

REGULAR CALENDAR

February 22, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on JUDICIARY to which was referred HB 1264,

AN ACT establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. Gary S. Hopper

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: JUDICIARY
Bill Number: HB 1264
Title: establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages.
Date: February 22, 2012
Consent Calendar: NO
Recommendation: OUGHT TO PASS

STATEMENT OF INTENT

Fundamental to our constitutional rights is the free exercise of religion. For many that worship is not confined to the Sabbath or a place of worship, but extends into their day-to-day life. Compelling people to violate their beliefs in order to conduct business is a violation of their right of conscience. The minority believes this bill should be Ought to Pass.

Rep. Gary S. Hopper
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB 1264, establishing a religious exemption for individuals who do not wish to provide accommodations, goods, or services for marriages. **OUGHT TO PASS.**

Rep. Gary S. Hopper for the **Minority** of JUDICIARY. Fundamental to our constitutional rights is the free exercise of religion. For many that worship is not confined to the Sabbath or a place of worship, but extends into their day-to-day life. Compelling people to violate their beliefs in order to conduct business is a violation of their right of conscience. The minority believes this bill should be Ought to Pass.

Original: House Clerk
Cc: Committee Bill File

MINORITY REPORT

COMMITTEE: Judiciary

BILL NUMBER: HR 1264

TITLE: _____

DATE: _____ CONSENT CALENDAR: YES NO

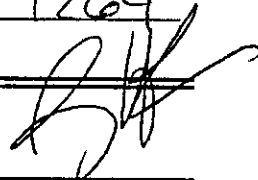
- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

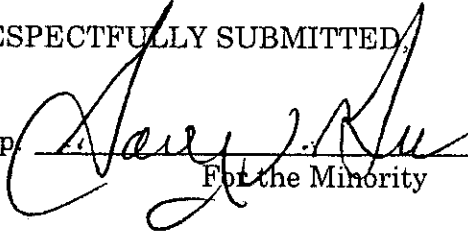
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day life. Compelling people to
violate their beliefs in order to
conduct business is a violation
of their Right of Conscience.
The minority believes ~~this~~ HR 1264
should be OTP

COMMITTEE VOTE: _____



RESPECTFULLY SUBMITTED,

Rep. 
For the Minority

• Copy to Committee Bill File