Bill as Introduced

HB 1549 - AS INTRODUCED

2006 SESSION

06-2828
05/01

HOUSE BILL ***1549***

AN ACT excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

SPONSORS: Rep. O'Brien, Hills 4; Rep. O'Neil, Rock 15; Rep. Mirski, Graf 10; Sen. Roberge, Dist 9

COMMITTEE: Commerce

ANALYSIS

This bill establishes a limited exemption from the state law prohibiting age discrimination. The bill permits an individual to deny public accommodations to a person under 21 years of age for bona fide economic or public safety reasons, under certain circumstances.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1549 – AS INTRODUCED

06-2828
05/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

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

1 New Paragraph; Fair Housing; Exemptions; Bona Fide Economic Reasons. Amend RSA 354-A:13 by inserting after paragraph III the following new paragraph:

IV. Nothing in this chapter shall prohibit the denial of public accommodations to a person under 21 years of age for bona fide economic or public safety reasons where there cannot be shown to be a pattern of discriminatory denial of public accommodations to persons under 21 years of age for other than bona fide economic or public safety reasons by the person charged.

2 Unlawful Discriminatory Practices in Public Accommodations; Exemption for Bona Fide Economic Reasons. Amend RSA 354-A:17 to read as follows:

354-A:17 Unlawful Discriminatory Practices in Public Accommodations. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the age, sex, race, creed, color, marital status, physical or mental disability or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of age, sex, race, creed, color, marital status, physical or mental disability or national origin; or that the patronage or custom thereat of any person belonging to or purporting to be of any particular age, sex, race, creed, color, marital status, physical or mental disability or national origin is unwelcome, objectionable or acceptable, desired or solicited. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation. ***Nothing in this chapter shall prohibit the denial of public accommodations, advantages, facilities, and privileges of any such place to a person under 21 years of age where the person so charged with such denial sets forth a bona fide economic or public safety reason for doing so, unless that person so charged can be shown to have engaged in a pattern of denying public accommodations to persons under 21 years of age due to other than bona fide economic or public safety reasons.***

3 Effective Date. This act shall take effect July 1, 2006.

Committee Minutes

COMMERCE

HB 1549

NOT RECOMMENDED FOR FUTURE LEGISLATION

October 18, 2006

The Committee recommends no future legislation. Laws currently on the books allow landlords and places of public accommodation to deny housing or accommodations based on economic or public safety reasons or other legitimate reasons and future legislation is not needed.

17-0

Rep. Stella Scamman

INTERIM STUDY
COMMITTEE REPORT

COMMITTEE: Commerce

BILL NUMBER: HB 1549

TITLE: excluding certain acts based on . . . .

DATE: Oct. 18, 2006

☐ **RECOMMENDED FOR FUTURE LEGISLATION**

LSR No. _____ **(If legislation is already filed, please list LSR no.)**

☒ **NOT RECOMMENDED FOR FUTURE LEGISLATION**

STATEMENT OF INTENT: (May be handwritten)

Public Accomodation HB 1549

The Committee recomends no future legislation. Laws currently on the books allow landlords and places of public accomodation to deny housing or accomodations based on economic or public safety reasons or other legitimate reasons and future legislation is not needed. 17-0

COMMITTEE VOTE: 17-0 (Attach Committee Voting Sheet)

OK SR

Rep. Stella Scanmon / STE
For the Committee

Rev. 7/98

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1549 Date 1-12-06

Committee Commerce

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
BOB MEAD	Representative	673-3203	Self.	✓	
Katharine Daly, Ex. Dir. NH Human Rights Comm					

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 1549

BILL TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: January 12, 2006

LOB ROOM: 302 **Time Public Hearing Called to Order:** 11 am

Time Adjourned: 12:10 pm

(please circle if present)

Committee Members: Reps. S. Francoeur, Stepanek, Belanger, Langley, D. Flanders, Marshall Quandt, Matthew Quandt, C. Clark, S. Scamman, Headd, Kidder, J. Martin, Pelkey, Kathleen Taylor, Reardon, DeStefano, Kopka, DeVries, Egbers, McLeod and Mitchell.

Bill Sponsors: Reps. O'Brien, O'Neil, Mirski and Sen. Roberge

TESTIMONY

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

Rep. William O'Brien, prime sponsor – Introduced the bill.

Q: Chairman Sheila Francoeur – Why age 21?

A: Seemed appropriate.

Q: Rep. Stephen Stepanek – Could you deny motor cyclists accommodation?

A: Unclear.

Q: Rep. Betsy DeVries – Did you check on federal housing discrimination laws?

A: State statute exceeds federal law.

Rep. Michael O'Neil, co-sponsor – Supports the bill. Trying to upgrade Hampton Beach to make it more family friendly.

Q: Rep. Angeline Kopka – Tenant, landlord bill?

A: Will look into it.

Rep. Martha McLeod – Have same problem in the North Country.

*Katherine Daly, Executive Director, Human Rights Commission – No position on the bill; informational only. Economic and public safety reasons are part of present law.

Rep. Paul Mirski, co-sponsor – Supports the bill.

Robert R. Preston & Duane Windemiller, business owners – Support the bill.

Henry Veilleux, NH Lodging & Restaurant Association – For Senate bill 334 or 353. Will help subcommittee with correct language.

Sam Langley from Boscawen, representing self – Age 18 is age of majority.

Respectfully Submitted:

Charles L. Clark, Clerk

SCAMMAN; MARTIN, DESTEFANO

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 1549

BILL TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: January 12, 2006

LOB ROOM: 302 **Time Public Hearing Called to Order:** {Time} 11:00AM

Time Adjourned: {Time} 12:10 PM.

(please circle if present)

Committee Members: Reps. S. Francoeur, Stepanek, Belanger, Langley, D. Flanders, Marshall Quandt, Matthew Quandt, C. Clark, S. Scammam, Headd, Kidder, J. Martin, Pelkey, Kathleen Taylor, Reardon, DeStefano, Kopka, DeVries, Egbert, McLeod and Mitchell.

Bill Sponsors: Reps. O'Brien, O'Neil, Mirski and Sen. Roberge

TESTIMONY

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

* REP WILLIAM O'BRIEN – FOR

Q FRANCOEUR – WHY AGE 21?

A. SEEMED APPROPRIATE.

Q MITCHELL – HAVE CHARGES BEEN FILED?

A – THEY MAY BE.

Q STEPANEK – COULD YOU DENY MOTORCYCLISTS ACCOMADATION?

ANS: – UNCLEAR

Q DEVRIES – DID YOU CHECK ON FEDERAL HOUSING DISCRIMINATION LAWS?

A. – STATE STATUTE EXCEEDS FED. LAW.

HB 1549 CONT.

REP O'NEIL — FOR — TRYING TO UPGRADE HAMPTON BEACH TO MAKE IT MORE FAMILY FRIENDLY.

KOPKA — TENANT, LANDLORD, BILL ?
A - WILL LOOK INTO IT.

STEPANEK —

MCLEOD — SAME PROBLEM IN N. COUNTRY

X KATHERINE DALY — NO POSITION — INFORMATIONAL EX. OP. ONLY.
HUMAN RIGHTS COMM.
ECONOMIC + PUBLIC SAFETY REASONS ARE PART OF PRESENT LAW.

REP MIRSKI — FOR —

ROBERT PRESTON — FOR — WANTS RIGHT OF REFUSAL

DUANE WINDEMILLER — FOR —
BUSINESS OWNERS

Q MITCHELL — COULDN'T YOU DISCRIMINATE AGAINST 21 YR OLD BLACK MUSLIMS? A NOT NECESSARILY. MUST SHOW A PATTERN.

HENRY VEILLEUX — FOR — SENATE BILL 334 OR 353 REST. ASSOC. WILL HELP SUBC. WITH CORRECT LANGUAGE.

SAM LANGLEY — OPPOSE — AGE 18 IS AGE OF MAJORITY. SELF

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 1549

BILL TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: February 7, 2006

Subcommittee Members: Reps. Acamman, Martin and DeStefano

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep. DeStefano

Seconded by Rep. Martin

Vote: 3-0

Respectfully submitted,

Rep. Stella Scamman
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 1549

BILL TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: ~~{Type DATE}~~ 2-7-06

Subcommittee Members: Reps. {Type NAMES}

Scammon, Martin, DeStefano

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Steve DeStefano

Seconded by Rep. Jim Martin

Vote: 3-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. {Type NAME}
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 1549

BILL TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: August 25, 2006

Subcommittee Members: Reps. Scamman, Martin, and DeStefano

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) **NOT RECOMMENDED FOR FUTURE LEGISLATION**

Moved by Rep. Martin

Seconded by Rep. DeStefano

Vote: 3-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Stella Scamman
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 1549

BILL TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: August 25, 2006

Subcommittee Members: Reps. Scamman, Martin, and DeStefano

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) Not recommended for further legislation

Moved by Rep. Jim Martin

Seconded by Rep. Steve DeStefano

Vote: 3-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Stella Scamman
Subcommittee Chairman/Clerk

New Hampshire Commission for Human Rights

COMMISSIONERS

KENNETH C. BROWN, CHAIR
LAURA D. SIMOES
GAYLE E. TROY
GRIFFIN T. DALIANIS, Ph.D.
MARTA E. RODRIGUEZ
DEBORAH R. REYNOLDS
PURNELL F. ROSS, JR.

2 CHENELL DRIVE
CONCORD, NEW HAMPSHIRE 03301-8501
TEL. (603) 271-2767
TDD Access: Relay NH 1-800-735-2964
FAX (603) 271-6339
E-MAIL: humanrights@nhsa.state.nh.us

EXECUTIVE DIRECTOR
KATHARINE A. DALY – 271-6838

ASSISTANT DIRECTOR
ROXANNE JULIANO – 271-2051

INVESTIGATORS
LORNA D. GREER – 271-2054
KATHY BURNHAM – 271-6840
ADELAIDE SULLIVAN – 271-6621
RANDAL C. FRITZ – 271-2055
LUISA TASSAN – 271-6839
ADDIE HUTCHISON – 271-2050

EXECUTIVE SECRETARY
SHERYL COOMBS – 271-2768

BY HAND

August 25, 2006

Interim Study Committee: HB 1459
House Commerce Committee
State House
Concord, New Hampshire

Dear Representatives Scamman, Martin, and DeStefano:

Since our last meeting regarding this bill, I have done some research into the actual numbers and types of cases involving age discrimination in housing or public accommodations that have been filed at the Commission for Human Rights over the past 15 years. I did this in order to:

(1) Gain an idea of the numbers of incidents and thus the size of the problem, at least in terms of alleged consequences to landlords and innkeepers; and
(2) Gain a perspective on the types of resolutions of those cases actually filed, to determine the potential impact on those involved, should such a charge be filed against them.

Before the Legislature removes protection from discrimination from a segment of the population based on their age, I believe it is important to understand the size and scope of any alleged problem.

The results of my research are attached to this letter. As you can see, in terms of charges filed at the Commission, charges against landlords and places of public accommodation based on age make up a very small percentage of the overall numbers of cases filed. Thus the likelihood of being charged in relation to this issue would seem to be small.

Second, as you can see from the summaries of the facts and the resolutions of a representative sampling of these cases, many of the issues are serious, the amounts of the settlements are quite modest, and where there is no basis to claim discrimination, the Commission's investigation has uncovered that fact. For example, one case I have

included is very illustrative of the type of problem innkeepers are concerned about: a group of young men asking to rent a room. The Commission's investigation, which resulted in a dismissal, quickly determined that (a) the motel was full at the time in question; and (b) a group that size could not have reasonably occupied one room. The case was dismissed within 2 ½ months of filing. By comparison, the only other case involving a group's attempt to rent, actually did involve a policy that was discriminatory (only rent to married couples with children), but was resolved amicably with no monetary consequences to the responding party, only a promise to change the policy.

Since our last meeting, I have also had the opportunity to speak about this matter with a representative of the US Department of Housing and Urban Development (HUD) who has been working with us on our goal of obtaining interim certification as substantially equivalent and thus eligible for substantial federal funding for enhanced housing enforcement efforts. The representative reviewed HB 1549 and advised me that it would be illegal under federal law and would pose a problem. This confirms my concerns, expressed to you at the public hearing on this bill, that housing providers would still be subject to federal law regarding familial status discrimination and that the bill might well jeopardize our funding from HUD.

Having reviewed the bill again, my suggestions, in priority of favorability, would be:

(1) Do not recommend passage of this bill, for the reasons outlined above.

(2) Remove the housing section altogether, and change the amending language in the public accommodations section to read:
Nothing in this section shall prohibit the denial of public accommodations, advantages, facilities, and privileges of any such place to any person provided the person charged with such denial can establish a bona fide economic or public safety reason for his or her actions.

Thank you very much for your consideration.

Very truly yours,

Katharine A. Daly
Executive Director

Attachments

NH COMMISSION FOR HUMAN RIGHTS

INFORMATION ON AGE DISCRIMINATION CHARGES IN HOUSING AND PUBLIC ACCOMMODATIONS
15 YEAR PERIOD: 2/01/1991-2/01/2006

TOTAL CHARGES, ALL CATEGORIES AND BASES: 4208
TOTAL HOUSING CHARGES, ALL BASES: 100 (2.3%)
TOTAL PUBLIC ACCOMMODATIONS CHARGES, ALL BASES: 113 (2.6%)

BREAKDOWN OF HOUSING CHARGES BY BASIS:

BASIS	#
Race/color:	22
Disability:	21
Familial status (children):	19
Age (other than familial status):	16
Sex (including pregnancy/sexual harassment)	8
National origin	6
Marital status	5
Sexual orientation	3

(Housing charges on basis of age, including children, as a percentage of total charges filed in period surveyed = .008%. [35 = .008 of 4208])

BREAKDOWN OF PUBLIC ACCOMMODATIONS CHARGES BY BASIS:

BASIS	#
Race/color:	31
Disability:	30
Sex:	25
National origin	16
Age:	9
Religion:	2
Sexual orientation:	1
Marital status:	1

(Public accommodations charges on the basis of age as a percentage of total charges filed in period surveyed = .002% [9 = .002% of 4208])

Resolutions of these charges are shown on the following page.

CHARGE RESOLUTIONS OF AGE-BASED CASES FOR PERIOD:

Housing Age Cases: Total resolutions: 22

Settlements	8	
Conciliation after cause finding	1	
Failure to cooperate/locate CP	9	
No jurisdiction	3	
CP filed suit in court	1	
Unknown	13	(data as of 2/01/06 – cases may still be Open/unresolved)

Public Accommodations Age Cases: Total resolutions: 8

Settlements	3
Withdrawn, no benefits	1
Failure to cooperate	1
No probable cause	1
To court after cause finding	2

HUMAN RIGHTS COMMISSION

RESOLUTIONS OF SELECTED AGE-BASED DISCRIMINATION CASES 1991-2006: (NOTE: Fact that case was settled does not indicate finding that law was actually violated, unless otherwise indicated. Many cases settle prior to actual finding of Cause or No Cause by the investigating commissioner assigned to case. Information is provided only to give idea of typical settlements.)

– illegal 45 year age limit – settled at HUD

– public accommodation discrimination based on age: dispute re extra cots for children. No Probable Cause.

- illegal 45 year age limit. Predetermination settlement $1000.

– age discrimination in housing. Allegation that sub-tenants "too young" therefore rejected, even though landlords said sub-lessees were OK in principle. 20 year-old prospective tenant, with good references and adequate income. Allegation respondent stated CP "Might make a mess of unit." "I'd prefer not to rent to people your age because you party a lot and you'll ruin my unit." Probable Cause (PC) found. Settled for less than $4000.

Housing, Age. 55 and older mobil home park that allowed younger people in but refused to allow charging party (CP) to adopt a child. Settled. No cash. Changes to operation of park. Determined to be not in compliance with requirements for housing for older persons.

Housing discrimination: Age and marital status, when group of young women asked to rent summer cottage. Agent directed by owners not to rent to younger people, only to married couples with children. Pre-determination settlement: no cash. Respondent agreed to comply with state law against discrimination.

. - Public accommodation: 25 year old denied room with 4 friends. Withdrawn, no settlement, after investigation by Commission showed all units full and, even if hadn't been full, deciding factor would have been large group, not protected status.

– Housing based on age and national origin. Charging parties had loan to purchase mobil home; applied for tenancy. Ages 23 and 21. Comments made about complainant being pregnant and not returning to work. Case settled: $45 appraisal fee returned and apology to CPs.

– public accommodation discrimination based on age. CP refused motel accommodation for herself and her husband because respondent "Doesn't rent to anyone under 21." Case settled for apology letter from Inn and gift certificate for 2 nights lodging. Inn changed policy and trained staff.

biggest settlement less than 4000 –

Housing discrimination based on age. Charging party age 64, son age 43 came to live with her in mobil home park. Respondent tried to evict saying that he was "underage resident." Case withdrawn/settled. Park age restrictions not legal under RSA 354-A:10.

Age discrimination: allegation that landlord refused lease based on age of complainant's mother, who was 78. Alleged that landlord stated he feared that she "might die before lease expired and son would not pay rent." Case settled before determination of cause. $1000.

– housing discrimination in mobile home park. Charging party was unable to sell mobile home to couple interested in purchasing for their 18 year-old daughter. Respondent allegedly claimed to be a 45 year-old and older park – which at that time (2003), had been illegal for at least 10 years under both state and federal housing laws. Removed to court – settled.

– public accommodation discrimination. Motel had policy that you must be 21 or older to rent room. Denied reservations to 2 women. Probable Cause found at Commission. Settled in court.

– public accommodation discrimination. Motel policy not to rent rooms to persons under 21. Refused to honor reservation made for woman age 19/20 and woman over 21 traveling together from Connecticut in connection with employment. Arrived in Concord in evening and had to find another motel. Pre-determination settlement: $1000 donation to Rape Crisis Center, change in policy, and training for staff.

Testimony

STATE OF NEW HAMPSHIRE DEPARTMENT OF SAFETY
Richard M. Flynn, Commissioner

Division of Fire Safety
Office of the State Fire Marshal
J. William Degnan, State Fire Marshal

Office: Richard M. Flynn Fire Academy, Route 106, Concord, N.H.
Mailing Address: 33 Hazen Drive, Concord, N.H. 03305
603-271-3294, FAX 603-271-1091

January 12, 2006

Dear Chairman Sheila Francoeur and Honorable Members of the Committee:

The Office of the State Fire Marshal supports House Bill 1549. Unfortunately due to another commitment I cannot attend your public hearing.

Providing public safety is a very important and difficult task. The business owners in our state work very hard to provide safe and secure accommodation for the traveling public. What a person does inside a place of public accommodations that creates a hazard, exposes not only themselves, but people in adjacent rooms, employees of the facilities and our public safety, fire and police officers that may be called to mitigate the problem.

The owner of the property is ultimately responsible for the safety of the occupants and should have the ability to show discretion in denying accommodation based on a safety concern. The owner or designee would have to justify the concern, should one file charges.

I support your effort to improve the opportunity for public accommodations to ensure an adequate level of safety for all the occupants.

Sincerely

J. William Degnan
State Fire Marshal

To: The Honorable Sheila Francoeur, Chair of the Commerce Committee and Members of the Commerce Committee

From: William O'Brien, State Representative, Hillsborough District 4

Date: January 12, 2006

Re: House Bill 1549 excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

Madame Chair and Members of the Committee,

The bill before you will allow the decision of a private property owner on whether to extend overnight accommodations to minors to be judged based on a standard of common sense and not one that would judge any refusal to rent to children to be an act of age discrimination.

It is unfortunate when the inability of our courts and agencies to apply common sense leads us to have to define common sense by statute. But that is the case here, because under present law, when a bed and breakfast, inn, motel or hotel is confronted with some young people who they can pretty much predict are going to be abusive of the property or disruptive to other guests, they can't apply common sense to say, "Of course we want to rent out our rooms, but we shouldn't be compelled to rent them when destruction or disturbance is a certainty."

I came to the issue because of an account I heard about an innkeeper out on the Seacoast who one evening was confronted by two 18-year-old girls who asked to rent a room. On inquiry, it became apparent to the innkeeper that the girls were likely the leading edge of a beer keg party that was to be hosted in the room they were asking to rent.

Now in another day and time when greater personal responsibility was the norm, those kids would have known that what they were asking was inappropriate and would have left when they realized that they weren't going to put one over on the innkeeper. Today, however, in a world driven by litigation and the attempt to find and vindicate attenuated rights, these kids have gone to the NH Commission on Human Rights, whose investigators have told the innkeeper that what he did was "discriminate" against these girls and he is going

to have to pay damages. The fact that the innkeeper knew that renting the room would likely disrupt other guests and could lead to property damage was no justification for his refusal.

This past weekend I took a tour of one of the small inns along the seacoast of our state. It was exactly as the couple who own it and run it described it to me. It was as if they have opened their lovely home to guests. Is it proper to say to that couple, "should any kids arrive, you have to rent to them no matter how likely it is that they will disrupt other guests and perhaps damage the business into which you have poured your life's savings and your hearts?"

The NH Human Rights Commission in interpreting the current version of RSA 354 would say yes to this question – any refusal to rent is age discrimination.

HB 1549 also would say that that you cannot engage in discriminate against young people in public accommodation, but it does allow you to act in accordance with the realities of life. It would say that if you have a bona fide economic or public safety reason not to rent to a minor, then that is acceptable, unless you can be shown to have over time falsely used those reasons to rent to young people.

The language was chosen to prohibit a standing rule that young people are to be denied public accommodation by any innkeeper. It requires innkeepers to evaluate each situation based on a presumption that age discrimination against minors is not to take place, but allows innkeepers to show economic or public safety reasons for not doing so. If they can make that showing, then they will have found a safe harbor against abusive claims.

Should we continue with the one-sided analysis suggested by the NH Human Rights Commission in their evaluation of RSA 354, we are going to drive out family vacationers from some areas of our Seacoast in favor of those recreational areas in Maine to the north and Massachusetts to the South that allow for a common sense approach to the issue of renting to young people.

If young people know you can go to the coast of New Hampshire or other recreational areas in our state for hotel room parties and innkeepers are prohibited by the straight jacket of unreasonable public accommodations laws from refusing to rent to unaccompanied minors, that is where they will come,

and families and others who do not care to have their vacations and holidays disrupted by such behavior will go elsewhere.

Law and code enforcement personnel expect innkeepers to maintain public order in their establishments. Indeed for some licensed establishments the failure to do so can result in the lost of licenses. Let us not allow the absurdity of our laws on one hand telling innkeepers to take on certain responsibilities, but on the other hand penalizing them for carrying out those responsibilities. HB 1549 strikes a proper balance between these competing considerations.

COMMENTS ON HB 1549
PREPARED BY
NH COMMISSION FOR HUMAN RIGHTS
HOUSE COMMERCE COMMITTEE 1/11/06

This bill amends both the housing section (RSA 354-A:13) and the public accommodations section (RSA 354-A:17) of the NH Law Against Discrimination, enforced by the Commission for Human Rights. (Note: There appears to be a typographical error in paragraph 1 of this bill, which amends RSA 354-A:13. This section has to do with housing, but the bill refers to "public accommodations.")

The bill would allow landlords and places of public accommodation to deny housing or accommodations to persons under age 21 based upon "bona fide economic or public safety reasons" so long as a pattern of denying housing or public accommodations to persons under 21 years of age cannot be shown.

The Commission for Human Rights has concerns about this bill as written:

1. Currently, all landlords and places of public accommodation have the right to deny housing or accommodations based on economic or public safety reasons, or for any other legitimate reason, regardless of the age of the person involved. They do not have the right to refuse accommodations ***solely*** because of the age of an otherwise qualified person. What does this bill add to the law?

2. If HB 1549 passes, the Commission is concerned that its request for interim substantial equivalency certification from HUD may be jeopardized. Federal Fair Housing law prohibits discrimination against persons based on "familial status" (i.e. persons in the household under 18 years of age, pregnancy, or in the process of gaining custody of a person under 18). This bill creates an exemption based on age, thus our statute would now be different from federal law in this respect.

The Commission for Human Rights is currently supporting HB 689-FN, which passed in the House on January 4, in order to obtain interim certification of our housing discrimination law as "substantially equivalent" by HUD (US Department of Housing and Urban Development). *Substantial equivalency* means that the protections and provisions under our state law

are the same or nearly the same as under federal fair housing laws. Passage of HB 689-FN will most likely result in significant federal revenue coming to the Commission for Human Rights ($115,000 per year +/- for the first three years).

3. If HB 1549 were passed, most landlords would still have to comply with federal law, which has no exemption like that contained in HB 1549, and which prohibits discrimination based upon familial status. Thus housing providers could still be subject to complaints under federal housing law for actions which they thought were legal under NH law, in some circumstances.

4. The effect of the language used in the bill regarding "bona fide economic and public safety reasons" is troubling. The Commission recognizes that some landlords and places of public accommodation have serious issues that they are trying to address through this bill. However, if passage of this bill is intended or understood to allow landlords and/or places of public accommodation to adopt blanket policies of not renting to persons under 21, then the language of the bill as presently written may frustrate that purpose.

Adopting a blanket policy of not renting or providing accommodations to anyone under 21 could be interpreted as evidence of a "pattern of discrimination against persons under 21," thus neutralizing the effect of the language providing the exception. Not adopting a blanket policy, but making an individualized assessment of the safety risks associated with renting or providing accommodations to a particular person or group of persons, would not be discriminatory.

Therefore, should the phrase "*where there cannot be shown to be a pattern of discriminatory denial of housing [or public accommodations] to persons under 21 years of age*" be deleted? Or should the amendment make clear that it is not intended to allow landlords and place of public accommodation to adopt blanket policies excluding persons under 21 years of age? This may need to be clarified.

5. In the field of discrimination law, exceptions to a prohibition against discrimination against a particular group for "bona fide" reasons are allowed in some cases by statute. For example, age and national origin can be bona fide occupational qualifications in some jobs. Such exceptions are meant to be narrow and are traditionally analyzed under the following legal test:

(1) Can the person complained against (landlord, employer, or public accommodation) show that its restriction is reasonably necessary to the essence of its business? And

(2) Would a tailored attempt to accomplish the same thing by assessment of individual characteristics be either pointless or impractical? In the case of HB 1549, if a landlord or place of public accommodation adopted a blanket restriction against persons under 21, this second factor would need to be proven either by: (a) showing that all or substantially all of those ruled out by the disqualification are unable to meet the legitimate requirements of being a tenant for either economic or public safety reasons, **or** (b) that it is impossible or impractical to assess the capabilities of people on an individualized basis with respect to these two qualities.

Do we have sufficient evidence about the group of persons under 21 in this state to establish these factors? Is a less restrictive means of accomplishing the objectives of this bill available?

The Commission respectfully asks the Committee to consider these questions.

Respectfully submitted,

Katharine A. Daly
Executive Director
NH Commission for Human Rights
2 Chenell Drive, Concord, NH 03301
603-271-6838
Katharine.Daly@nh.gov.

HAMPTON New Hampshire
POLICE

James B. Sullivan, *Chief of Police*

100 Brown Avenue • Hampton, New Hampshire 03842-2955
603-929-4444 • Fax 603-926-0570 • www.hamptonpd.com

January 17, 2006

Hon. Shelia Francoeur
NH House of Representatives
Chair of House
Commerce Committee
State House
Concord, NH

Re: House Bill 1549

Dear Rep. Francoeur;

This letter is written in support of HB1549 promoting the concept of giving more discretion to rental agents when renting to individuals under the age of 21. By way of background, I am the Police Chief for the Town of Hampton and have served as a police officer in this community for 22 years. In my experience, I have seen instances where renting properties to young people has led to inappropriate and illegal activity. Some of the activities include illegal alcohol use, disorderly conduct, loud parties and criminal mischief.

As you know, Hampton is a very popular summer resort community. Young people, under the age of 21, account for a large part of the population who visit our community during the summer season. Of concern to our area, this age group also represents a large number of people arrested for illegal activity. More specifically, illegal alcohol use by individuals under the age of 21 is a major issue at the beach. According to Hampton Police Department records, during the years 2000-2005 approximately 3,194 individuals from the ages of 18-21, have been arrested for illegal possession of alcohol or having possession of an open container of alcohol in public.

The issue of under age drinking at rental properties is a significant issue in Hampton during the summer months. Numerous anecdotal stories of rental properties being the site of underage drinking parties that result in the police responding and arresting underage people. At times these parties are located at a cottage or hotel unit rented by an underage person. I recall one instance many years ago, where a rental property was severely damaged by an out of control house party. The walls were torn apart, furniture was damaged, floors were flooded with alcohol and urine. I'm sure this was devastating to the homeowner and rental agent.

HAMPTON New Hampshire
POLICE

James B. Sullivan, *Chief of Police*

100 Brown Avenue • Hampton, New Hampshire 03842-2955
603-929-4444 • Fax 603-926-0570 • www.hamptonpd.com

In my opinion, striking a balance in this statute and allowing the rental agents and owners some discretion in their ability to rent properties would assist in reducing some of the problems faced at Hampton Beach.

Yours truly,

James B. Sullivan
Chief of Police

Jim Martin:

Kathryn Human Rights

O'Brien.
Penalty imposed
pattern?

HOUSE COMMITTEE RESEARCH OFFICE
New Hampshire House of Representatives
4th Floor, Legislative Office Building
Concord, New Hampshire 03301
TDD Access: Relay NH
1-800-735-2964

603-271-3600

To: Rep. Stella Scamman, Subcommittee Chairman

From: Pam Smarling, Committee Researcher
House Committee Research

Date: January 13, 2006

RE: HB 1549, excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations

---

HB 1549 as introduced would amend RSA 354-A, the state law that establishes the state Human Rights Commission. It proposes a limited exemption from this law to permit an individual to deny public accommodation to a person under 21 years of age under certain circumstances.

During the testimony on HB 1549 before the House Commerce Committee, references were made to the current law permitting hotel keepers or persons keeping public lodging houses to refuse accommodations to certain people. This law was adopted in 2002 with the adoption of SB 334. It added refusal provisions to RSA 353, a chapter that addresses hotels and tourist cabins. The 2002 law also amended the section in RSA 353 relative to the ejection of guests. The full text of these sections appear below.

2002 Legislative Session

SB 334, relative to grounds for refusal or denial of hotel accommodations.

Sponsors: Sen. Gatsas, Sen. Hollingworth, Sen. Johnson, Sen. Pignatelli,; Sen. O'Hearn, Sen. D'Allesandro

Signed by the Governor on May 15, 2002; Chapter 151, Laws of 2002;
effective May 15, 2002.

353:3-bb Refusal or Denial of Accommodations.

I. A hotel keeper, including any person keeping public lodging houses, tourist camps, or cabins, may refuse or deny any accommodations, facilities, or privileges of a hotel, lodging house, or campground to:

(a) Any person who is unwilling or unable to pay for accommodations and services of the hotel, lodging house, or campground. The hotel keeper may require the prospective guest to demonstrate the ability to pay by cash, valid credit card, or a validated check.

(b) Any person under the age of 18 who does not present a signed notification from a parent or legal guardian that the parent or legal guardian accepts liability of the guest room or campground site costs, taxes, all charges by the guest, and any damages to the hotel, lodging house, campground, guest room, or its furnishings or to the campground site caused by the minor guest while at the hotel, lodging house, or campground to the extent that such costs, taxes, damages, or charges exceed the amount of cash or credit card deposit already provided by the guest.

(c) Any person or persons, if admitting that person or those persons would cause the limit on the number of persons who may occupy any particular guest room in the hotel or lodging house or a site in the campground to be exceeded. For purposes of this subparagraph, the limit represents the number permitted by local ordinances or reasonable standards of the hotel, lodging house, or campground relating to health, safety, or sanitation.

II. Nothing in this section authorizes any hotel keeper to violate the state law against discrimination, RSA 354-A.

[Source.2002, 151:1, eff. May 15, 2002.]

353:3-c Ejection of Guests.

I. All hotel keepers and all persons keeping public lodging houses or cabins may remove or cause to be removed from such establishment any guest remaining in a rental unit in violation of RSA 353:3-b ***or RSA 353:3-bb*** by notifying such guest that the establishment no longer desires to entertain him ***or her*** and requesting that [~~he~~] ***the guest*** immediately leave. Any guest who remains or attempts to remain in a rental unit after being so requested to leave shall be guilty of a violation. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

II. All hotel keepers and persons keeping public lodging houses, cabins, or any rental unit may immediately remove or cause to be immediately removed by any law enforcement officer of this state, any guest who willfully denies other guests their right to quiet enjoyment of their tenancies, [~~or who violates any local or state law~~] ***including but not limited to any guest who:***

(a) Disturbs, threatens, or endangers other guests;

(b) Is less than 21 years of age and possesses alcohol;

(c) Possesses illegal drugs;

(d) Violates any rule of the hotel, lodging house, or campground that is posted in a conspicuous place and manner at the guest registration desk and in each guest room; or

(e) Violates any local or state law.

II-a. [~~Said~~] ***The*** right to remove, or cause to be removed, shall arise after the hotel keeper or person keeping a public lodging house, or cabin, or their agents makes a reasonable attempt to verbally warn said guest to cease and desist said breach of quiet enjoyment or

violation of local or state law. Upon such immediate eviction, the guest shall be refunded the unused portion of his ***or her*** pre-paid rental fee less damage charges for his ***or her*** actions. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

II-a. The right to remove, or cause to be removed, shall arise after the hotel keeper or person keeping a public lodging house, or cabin, or their agents makes a reasonable attempt to verbally warn said guest to cease and desist said breach of quiet enjoyment or violation of local or state law. Upon such immediate eviction, the guest shall be refunded the unused portion of his or her pre-paid rental fee less damage charges for his or her actions. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

III. Any law enforcement officer of this state, upon request of a hotel keeper, or person keeping a public lodging house or cabin, shall place under arrest and take into custody any guest who violates this section in the presence of the officer. Upon arrest, the guest shall be deemed to have abandoned his right of occupancy of the rental unit and the operator of the establishment may then make such unit available to other guests. The operator of said establishment shall employ all reasonable means to protect any personal property left on the premises by such guest.

[Source.1981, 433:1. 1986, 188:1. 1989, 343:2, eff. June 2, 1989. 2002, 151:2, eff. May 15, 2002.]

If I can provide further information on this, please let me know.

Voting Sheets

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 1549

BILL TITLE: **excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.**

DATE: February 8, 2006

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

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

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

Moved by Rep. DeStefano

Seconded by Rep. Martin

Vote: 15-3 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Nelson S. Allan, Clerk

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 1549

BILL TITLE: **excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.**

DATE: {Type DATE} 2/8/06

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. DESTEFANO

Seconded by Rep. MARTIN

Vote: 15-3 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CC
CONSENT CALENDAR VOTE: {Type VOTE} 15-3

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Charles L. Clark, Clerk

OFFICE OF THE HOUSE CLERK 2006 SESSION

COMMERCE

Bill #: 1549 Title: _____

PH Date: ___/___/___ Exec Session Date: 2/8/06

Motion: INTERIM STUDY Amendment #: _____

MEMBER	YEAS	NAYS
Francoeur, Sheila T, Chairman	✓	
Stepanek, Stephen B, V Chairman	✓	
Belanger, Ronald J	✓	
Langley, Jane S	✓	
Flanders, Donald H	✓	
Clark, Charles L, Clerk	✓	
Quandt, Marshall Lee	✓	
Quandt, Matthew J	✓	
Scamman, Stella		
Headd, James F		
Kidder, David H	✓	
Martin, James R	✓	
Pelkey, Stephen T	✓	
Taylor, Kathleen N		✓
Reardon, Tara G		
DeStefano, Stephen T	✓	
Kopka, Angeline A	✓	
DeVries, Betsi L	✓	
Egbers, Fran M	✓	
McLeod, Martha S		✓
Mitchell, Bonnie G		✓
TOTAL VOTE:	15	3

Printed: 12/19/2005

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 1549

BILL TITLE: **excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.**

DATE: Octboer 18, 2006

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) **NOT RECOMMENDED FOR FUTURE LEGISLATION**

Moved by Rep. Scamman

Seconded by Rep. Martin

Vote: 17-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Charles L. Clark, Clerk

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 1549

BILL TITLE: **excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.**

DATE: Octboer 18, 2006

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) NOT REC.

Moved by Rep. SCAMMON

Seconded by Rep. MARTIN

Vote: 17-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Charles L. Clark, Clerk

OFFICE OF THE HOUSE CLERK

2006 SESSION

COMMERCE

Bill #: 1549 Title: _____

PH Date: ___/___/___ Exec Session Date: 10/18/06

Motion: NOT REC Amendment #: _____

MEMBER	YEAS	NAYS
Francoeur, Sheila T, Chairman	✓	
Stepanek, Stephen B, V Chairman	✓	
Belanger, Ronald J		
Langley, Jane S	✓	
Flanders, Donald H	✓	
Clark, Charles L, Clerk	✓	
Quandt, Marshall Lee	✓	
Quandt, Matthew J	✓	
Scamman, Stella	✓	
Headd, James F	✓	
Kidder, David H	✓	
Martin, James R	✓	
Pelkey, Stephen T		
Taylor, Kathleen N	✓	
Reardon, Tara G	✓	
DeStefano, Stephen T	✓	
Kopka, Angeline A	✓	
DeVries, Betsi L	✓	
Egbers, Fran M	✓	
McLeod, Martha S		
Mitchell, Bonnie G		
TOTAL VOTE:	17	3

Printed: 12/19/2005

Committee Report

COMMITTEE REPORT

COMMITTEE: **Commerce**

BILL NUMBER: **HB 1549**

TITLE: excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations.

DATE: February 8, 2006 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☒ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill is being sent to interim study. Currently private property owners who intend overnight accommodations when they feel that they have an economic or public safety issue. The New Hampshire Commission for Human Rights wanted to make sure that we did not create an exception that would make our laws different from federal law. Both the sponsors and the New Hampshire Commission for Human Rights were committed to try and draft a bill that did not conflict with federal law, but help protect the rights of real property owners and inn keepers.

Vote 15-3.

Rep. Stephen T. DeStefano
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Commerce

HB 1549, excluding certain acts based on bona fide economic and public safety considerations from the prohibition against age discrimination in public accommodations. **REFER TO COMMITTEE FOR INTERIM STUDY**

Rep. Stephen T. DeStefano for Commerce: This bill is being sent to interim study. Currently private property owners who extend overnight accommodations when they feel that they have an economic or public safety issue. The New Hampshire Commission for Human Rights wanted to make sure that we did not create an exception that would make our laws different from federal law. Both the sponsors and the New Hampshire Commission for Human Rights were committed to try and draft a bill that did not conflict with federal law, but help protect the rights of real property owners and inn keepers. **Vote 15-3.**

Stephen T DeStefan

This bill is being sent to interim study. Currently private property owners who extend overnight accomodations feel that they can not deny public accomodations when they feel that they have an economic or public safety issue. The NH Commission for Human Rights wanted to make sure that we did not create an exception that would make our laws different from federal law. Both the sponsors and the NH Commission for Human Rights were committed to try and draft a bill that did not conflict with federal law but help protect the rights of rental property owners and innkeepers