03/27/2025 1118s

2026 SESSION

25-1128
11/02

SENATE BILL ***268***

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

SPONSORS: Sen. Avard, Dist 12; Sen. Lang, Dist 2

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill provides a definition for "biological sex" and provides that certain designations by biological sex do not constitute unlawful discrimination.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

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

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

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

354-A:1 Title and Purposes of Chapter.

I. 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, gender identity, 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, gender identity, 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.

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

2 New Section; State Commission for Human Rights; Miscellaneous Provisions; State Recognition of Biological Sex. Amend RSA 354-A by inserting after section 25 the following new section:

354-A:25-a State Recognition of Biological Sex.

I. Nothing in RSA 5-C:87, RSA 260-263, RSA 354-A, or any other law or regulation shall mean that it is unlawful discrimination based on sex or gender identity for any person or organization, public or private, to classify based on biological sex with respect to the following matters:

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

(b) In athletic or sporting events or competitions in a sport or similar activity in which physical strength, speed, or endurance is generally recognized to give an advantage to biological males.

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

II. “Biological sex” shall mean the male and female biological sexes. This section does not mean that any public or private entity is required by state statute to separate persons based upon biological sex.

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

VETOED February 6, 2026 / Veto Sustained August 19, 2026