SB 337 - AS INTRODUCED

2018 SESSION

18-2963
08/03

SENATE BILL ***337***

AN ACT relative to the human rights commission.

SPONSORS: Sen. Reagan, Dist 17; Rep. J. Edwards, Rock. 4

COMMITTEE: Judiciary

ANALYSIS

This bill makes various changes to the statutes governing the state commission for human rights.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

18-2963
08/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to the human rights commission.

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

1 State Commission for Human Rights; Definitions; Person; Place of Public Accommodation. Amend RSA 354-A:2, XIII-XIV to read as follows:

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

2 State Commission for Human Rights; Definitions. RSA 354-A:2, XIV-c through XV are repealed and reenacted to read as follows:

XIV-c. "Sex" includes pregnancy and medical conditions which result from pregnancy.

XIV-d. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, bisexuality, asexuality, or homosexuality. This definition is intended to describe the status of persons and does not impose any duty on a religious organization. This definition is intended to assure basic rights afforded under this chapter.

XIV-e. "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 including, without limitation, the profitability 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 including, without limitation, the profitability 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, including interference, coercion, or intimidation, as set forth in RSA 354-A:11, and retaliation, as set forth in RSA 354-A:19.

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

(c) Practices prohibited by Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. sections 3601 through 3619; and

(d) Aiding, abetting, inciting, ,or coercing another or attempting to aid, abet, incite, compel, or coerce another to commit an unlawful discriminatory practice.

3 State Commission for Human Rights; Powers. Amend RSA 354-A:5, II to read as follows:

II. To meet and function ***in*** any place within the state.

4 State Commission for Human Rights; Powers. Amend RSA 354-A:5, VI to read as follows:

VI. To receive, investigate, [~~and pass upon~~] ***hear, and resolve*** complaints alleging violations of this chapter.

5 State Commission for Human Rights; Powers. Amend RSA 354-A:5, IX to read as follows:

IX. To issue [~~such~~] ***training materials,*** 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.

6 State Commission for Human Rights. Amend RSA 354-A:5, XV to read as follows:

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

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

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~~] ***an employee with childbearing capacity*** 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)~~] ***(b)*** 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~~] ***an employee with childbearing capacity*** affected by pregnancy, childbirth, or related medical conditions shall be treated in the same manner

as any employee affected by any other temporary disability.

8 State Commission for Human Rights; Fair Housing. Amend RSA 354-A:8 to read as follows:

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~~] ***age, sex, race, color, national origin, religion, sexual orientation, gender identity, physical disability, mental disability, marital status, familial status, or actual or perceived status as a victim of sexual assault*** 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.~~]

9 State Commission for Human Rights; Interference, Coercion or Intimidation. Amend RSA 354-A:11 to read as follows:

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

10 State Commission for Human Rights. Amend RSA 354-A:15, V to read as follows:

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

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

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

11 State Commission for Human Rights; Retaliation. Amend RSA 354-A:19 to read as follows:

354-A:19 Retaliation and Required Records. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to discharge, expel, or otherwise retaliate or discriminate against any person because [~~he~~] ***such person*** has opposed any practices forbidden under this chapter or because [~~he~~] ***such person*** has filed a complaint, testified***,*** or assisted in any proceeding under this chapter.

12 State Commission for Human Rights Procedure on Complaints. Amend RSA 354-A:21, II to read as follows:

II.(a) After the filing of any complaint, one of the commissioners designated by the chair shall make, with the assistance of the commission's staff, prompt investigation in connection therewith; during the course of the investigation, the commission shall encourage the parties to resolve their differences through settlement negotiations; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, the commissioner shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation***,*** and persuasion. The members of the commission and its

staff shall not disclose what has occurred in the course of such endeavors, provided that the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been so disposed of. When the investigating commissioner finds no probable cause to credit the allegations in the complaint, the complaint shall be dismissed, subject to a right of appeal to superior court ***filed within 30 days of the notice of dismissal***. To prevail on appeal, the [~~moving~~] ***appealing*** party shall establish that the commission decision is unlawful or unreasonable by a clear preponderance of the evidence. The findings of the investigating commissioner upon questions of fact shall be upheld as long as the record contains credible evidence to support them. If it reverses the finding of the investigating commissioner, the superior court shall remand the case for further proceedings in accordance with RSA 354-A:21, II, unless the complainant or respondent elects to proceed with a hearing in superior court pursuant to RSA 354-A:21-a.

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

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

(d) If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served on such respondent***, with a copy forwarded to the complainant,*** an order requiring such respondent to cease and desist from

such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement***,*** or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, or the extension of full, equal***,*** and unsegregated accommodations, advantages, facilities***,*** and privileges to all persons, as in the judgment of the commission, will effectuate the purpose of this chapter and including a requirement for report of the manner of compliance. Such cease and desist orders for affirmative relief may be issued to operate prospectively. The commission may also order compensatory damages to be paid to the complainant by the respondent and, in order to vindicate the public interest, order the respondent to pay an administrative fine. The administrative fine shall be deposited in the general fund. The amount of the administrative fine shall not exceed:

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

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

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

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

(f) If upon all the evidence the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant***, with a copy to the respondent,*** an order dismissing the said complaint as to such respondent. [~~A copy of its order shall be delivered in all cases to the attorney general, and such other public officers as the commission deems relevant or proper. The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure and its own actions thereunder.~~]

(g) A copy of the commission's order shall be delivered in all cases to the attorney general, and such other public officers as the commission deems relevant. The commission shall establish rules of practice to govern, expedite, and effectuate procedures under this section.

13 State Commission for Human Rights. Amend RSA 354-A:21, IV to read as follows:

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

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