

HB 544 - AS INTRODUCED

2021 SESSION

21-0732

05/04

HOUSE BILL **544**

AN ACT relative to the propagation of divisive concepts.

SPONSORS: Rep. Ammon, Hills. 40; Rep. Cordelli, Carr. 4; Rep. J. Osborne, Rock. 4

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill defines and prohibits the dissemination of certain divisive concepts related to sex and race in state contracts, grants, and training programs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the propagation of divisive concepts.

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

1 1 New Chapter; Propagation of Divisive Concepts Prohibited. Amend RSA by inserting after
2 chapter 10-B the following new chapter:

3 CHAPTER 10-C

4 PROPAGATION OF DIVISIVE CONCEPTS PROHIBITED

5 10-C:1 Definitions. In this chapter:

6 I. "Contractor" means any and all persons, individuals, corporations, or businesses of any
7 kind that in any manner have entered into a contract, or perform a subcontract pursuant to a
8 contract, with the state of New Hampshire.

9 II. "Divisive concept" means the concept that:

10 (a) One race or sex is inherently superior to another race or sex;

11 (b) The state of New Hampshire or the United States is fundamentally racist or sexist;

12 (c) An individual, by virtue of his or her race or sex, is inherently racist, sexist, or
13 oppressive, whether consciously or unconsciously;

14 (d) An individual should be discriminated against or receive adverse treatment solely or
15 partly because of his or her race or sex;

16 (e) Members of one race or sex cannot and should not attempt to treat others without
17 respect to race or sex;

18 (f) An individual's moral character is necessarily determined by his or her race or sex;

19 (g) An individual, by virtue of his or her race or sex, bears responsibility for actions
20 committed in the past by other members of the same race or sex;

21 (h) Any individual should feel discomfort, guilt, anguish, or any other form of
22 psychological distress on account of his or her race or sex; or

23 (i) Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by
24 a particular race to oppress another race.

25 (j) The term "divisive concepts" includes any other form of race or sex stereotyping or
26 any other form of race or sex scapegoating.

27 III. "Race or sex stereotyping" means ascribing character traits, values, moral and ethical
28 codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or
29 sex.

30 IV. "Race or sex scapegoating" means assigning fault, blame, or bias to a race or sex, or to
31 members of a race or sex because of their race or sex. It similarly encompasses any claim that,

1 consciously or unconsciously, and by virtue of his or her race or sex, members of any race are
2 inherently racist or are inherently inclined to oppress others, or that members of a sex are
3 inherently sexist or inclined to oppress others.

4 V. "The state of New Hampshire" means all agencies and political subdivisions of the state
5 of New Hampshire, including counties, cities, towns, school districts, and the state university
6 system.

7 VI. "Student" means any and all students of any school district, school, college, or university
8 which receives grants, funds, or assets from the state of New Hampshire.

9 10-C:2 Unlawful Propagation of Divisive Concepts.

10 I. Requirements for the state of New Hampshire:

11 (a) The state of New Hampshire shall not teach, instruct, or train any employee,
12 contractor, staff member, student, or any other individual or group, to adopt or believe any of the
13 divisive concepts defined in RSA 10-C:1, II.

14 (b) No employee, contractor, staff member, or student of the state of New Hampshire
15 shall face any penalty or discrimination on account of his or her refusal to support, believe, endorse,
16 embrace, confess, act upon, or otherwise assent to the divisive concepts defined in RSA 10-C:1, II.

17 II. Requirements for government contractors:

18 (a) All state contracts entered into on or after the effective date of this chapter shall
19 include the following provision:

20 "During the performance of this contract, the contractor agrees as follows:

21 The contractor shall not use any workplace training that inculcates in its employees any form of race
22 or sex stereotyping or any form of race or sex scapegoating, including the concepts that: (a) one race
23 or sex is inherently superior to another race or sex; (b) an individual, by virtue of his or her race or
24 sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (c) an individual
25 should be discriminated against or receive adverse treatment solely or partly because of his or her
26 race or sex; (d) members of one race or sex cannot and should not attempt to treat others without
27 respect to race or sex; (e) an individual's moral character is necessarily determined by his or her race
28 or sex; (f) an individual, by virtue of his or her race or sex, bears responsibility for actions committed
29 in the past by other members of the same race or sex; (g) any individual should feel discomfort, guilt,
30 anguish, or any other form of psychological distress on account of his or her race or sex; or (h)
31 meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular
32 race to oppress another race. The term "race or sex stereotyping" means ascribing character traits,
33 values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual
34 because of his or her race or sex, and the term "race or sex scapegoating" means assigning fault,
35 blame, or bias to a race or sex, or to members of a race or sex because of their race or sex."

36 (b) The contractor shall send to each labor union or representative of workers with
37 which the contractor has a collective bargaining agreement or other contract or understanding, a

1 notice, to be provided by the agency contracting officer, advising the labor union or workers'
2 representative of the contractor's commitments under this section, and shall post copies of the notice
3 in conspicuous places available to employees and applicants for employment.

4 (c) In the event of the contractor's noncompliance with the requirements of this section,
5 or with any rules, regulations, or policies that may be promulgated in accordance with this section,
6 the contract may be canceled, terminated, or suspended in whole or in part and the contractor may
7 be declared ineligible for further government contracts.

8 (d) The contractor shall include the provisions of this section in every subcontract or
9 purchase order unless exempted by rules, regulations, or policies of the department of administrative
10 services, so that such provisions shall be binding upon each subcontractor or vendor. The contractor
11 shall take such action with respect to any subcontract or purchase order as may be directed by the
12 department of administrative services as a means of enforcing such provisions including sanctions
13 for noncompliance.

14 III. The department of administrative services, or an agency designated by the department
15 of administrative services, is directed to investigate complaints received alleging that a state
16 contractor is utilizing such training programs in violation of the contractor's obligations under the
17 binding provisions of this section. The department shall take appropriate enforcement action and
18 provide remedial relief, as appropriate.

19 IV. The heads of all agencies shall review their respective grant programs and identify
20 programs for which the agency may, as a condition of receiving such a grant, require the recipient to
21 certify that it will not use state funds or assets to promote any of the divisive concepts defined in
22 RSA 10-C:1, II.

23 V. Requirements for agencies.

24 (a) The fair and equal treatment of individuals is an inviolable principle that must be
25 maintained in the state workplace. Agencies should continue all training that will foster a
26 workplace that is respectful of all employees. Accordingly:

27 (1) The head of each agency shall use his or her authority under to ensure that the
28 agency, agency employees while on duty status, and any contractors hired by the agency to provide
29 training, workshops, forums, or similar programming, for purposes of this section, "training", to
30 agency employees do not teach, advocate, act upon, or promote in any training to agency employees
31 any of the divisive concepts listed in RSA 10-C:1; and

32 (2) Agency diversity and inclusion efforts shall, first and foremost, encourage agency
33 employees not to judge each other by their color, race, ethnicity, sex, or any other characteristic
34 protected by federal or state law.

35 (b) The commissioner of the department of administrative services, pursuant to RSA
36 541-A, shall develop regulations for the enforcement of the provisions of this statute.

37 (c) Each agency head shall:

1 (1) Issue a policy incorporating the requirements of this chapter into agency
2 operations, including by making compliance with the policy a provision in all agency contracts;

3 (2) Request that the agency thoroughly review and assess not less than annually
4 thereafter, agency compliance with the requirements of the policy in the form of a report submitted
5 to the department of administrative services; and

6 (3) Assign at least one senior political appointee responsibility for ensuring
7 compliance with the requirements of the policy.

8 VI. Review of agency training.

9 (a) All training programs for state agency employees relating to diversity or inclusion
10 shall, before being used, be reviewed by the department of administrative services for compliance
11 with the requirements of RSA 10-C:2, V.

12 (b) If a contractor provides a training for agency employees relating to diversity or
13 inclusion that teaches, advocates, or promotes the divisive concepts defined in RSA 10-C:1, II, and
14 such action is in violation of the applicable contract, the agency that contracted for such training
15 shall evaluate whether to pursue debarment of that contractor, consistent with applicable law and
16 regulations.

17 10-C:3 General Provisions.

18 I. Nothing in this chapter shall prevent agencies or contractors from promoting racial,
19 cultural, or ethnic diversity or inclusiveness, provided such efforts are consistent with the
20 requirements of this chapter.

21 II. Nothing in this chapter shall be construed to prohibit discussing, as part of a larger
22 course of academic instruction, the divisive concepts listed in RSA 10-C:1, II in an objective manner
23 and without endorsement.

24 III. If any provision of this chapter, or the application of any provision to any person or
25 circumstance, is held to be invalid, the remainder of this chapter and the application of its provisions
26 to any other persons or circumstances shall not be affected thereby.

27 2 Effective Date. This act shall take effect January 1, 2022.