

JAMES H. DOUGLAS
GOVERNOR



State of Vermont
OFFICE OF THE GOVERNOR

May 17, 2006

Donald Milne, Clerk
Vermont House of Representatives
State House
Montpelier, VT 05602

Dear Don:

I am returning H.865, *An Act Relating to Nondiscrimination*, without my signature because of my objections described herein.

Discrimination in Vermont is unacceptable and our state has a long, healthy and proud history of acceptance and tolerance. H.865 makes significant revisions to all of Vermont's anti-discrimination laws in order to include, as a protected class, individuals who do not conform to sexual stereotypes. The bill defines the protection as one based on "gender identity or expression," or, as described by its proponents, to individuals who express their gender in a non-traditional fashion, either through self-identification with a particular gender, or through appearance, expression or behavior regardless of one's sex at birth.

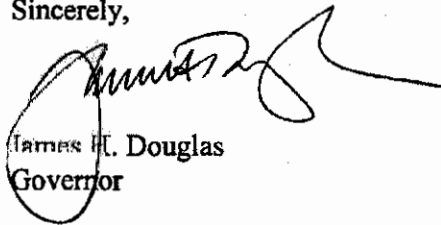
I am concerned that H.865 did not receive the kind of careful scrutiny and study that would be expected prior to making major modifications to Vermont's anti-discrimination laws—laws that not only afford protection to protected classes but laws that subject employers, public accommodations and others to legal liability. This concern was shared by a minority in the House who, on February 28, 2006, asked unsuccessfully that the bill be returned to the House Judiciary Committee for further study.

Our current anti-discrimination laws have, to date, provided protection to the individuals who would be covered by the provisions of H.865. The Vermont Attorney General's Office has filed charges alleging discrimination under current law in two cases where transsexual complainants have alleged discrimination on the basis of their gender identity. The jurisprudence around the country on this issue is developing and the Attorney General's position has found support from courts in other jurisdictions. Those cases, however, have addressed the issues in fact-specific scenarios involving either transsexual or transgendered individuals. The definition of gender identity and expression in H. 865 is ambiguous and potentially more far-reaching, however, and raises many questions with regards to its breadth, its implementation and its enforcement.

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The proponents of H.865 argue that the bill is necessary to provide fair notice and clarity to Vermonters, Vermont businesses and employers, and Vermont's places of public accommodation, that it is unlawful to discriminate against an individual who may express his or her gender in a non-traditional manner. Whether H. 865 provides that clarity, or just raises more questions, is an issue with which some lawyers, and indeed, the Vermont Human Rights Commission responsible for its enforcement, are struggling. It would be inappropriate and unfair to every employer, landlord, provider of public accommodation, lender and school to put a law on the books that creates new obligations and liabilities, while many who would advise them are struggling with the bill's terms and scope.

Sincerely,



James H. Douglas
Governor

JHD/sy

2006

H.865 Veto Session:

Governor James Douglas vetoed House Bill 865, An act relating to nondiscrimination. The veto session was held on June 1, 2006. No action was taken on the veto by the House or Senate. Gaye Symington of Jericho presided as Speaker and Brian Dubie of Essex as Lieutenant Governor. The House session started at 10.00 A. M. and adjourned at 10.05 A.M.

Sources:

Office of the House Clerk website:

<http://www.leg.state.vt.us/HouseClerk/Vetosessions.htm>