TO THE	HONOR	ARIF	SENATE:

- The Committee on Economic Development, Housing and General Affairs to which was referred Senate Bill No. 103 entitled "An act relating to amending the prohibitions against discrimination" respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

 Sec. 1. 21 V.S.A. § 495 is amended to read:
- 8 § 495. UNLAWFUL EMPLOYMENT PRACTICE
 - (a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition:
 - (1) For any employer, employment agency, or labor organization to harass.or discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;<a href="https://example.com/harass-or-against-agai

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(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise <u>harass or</u> discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual

orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;

(4) For any labor organization, to limit, segregate, or qualify its membership with respect to any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age to discriminate against any individual or against a qualified individual with a disability or to limit, segregate, or qualify its membership; or against a qualified individual with a disability.

* * *

(7) For any employer, employment agency, labor organization, or person seeking employees to discriminate between employees on the basis of sex, race, or national origin or against a qualified individual with a disability by paying wages to employees of one sex, race, or national origin or an employee who is a qualified individual with a disability at a rate less than the rate paid to employees of the other sex or a different race or national origin or without the physical or mental condition of the qualified individual with a disability for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this subsection.

1	(A) An employer may pay different wage rates under this subsection
2	when the differential wages are made pursuant to:
3	* * *
4	(iv) A bona fide factor other than sex, race, national origin, or
5	physical or mental condition. An employer asserting that differential wages
6	are paid pursuant to this subdivision $(7)(A)(iv)$ shall demonstrate that the factor
7	does not perpetuate a sex-based differential in compensation, based on sex,
8	race, national origin, or physical or mental condition; is job-related with
9	respect to the position in question; and is based upon a legitimate business
10	consideration.
11	* * *
12	(C) Nothing in this section shall be construed to diminish an
13	employee's right to privacy regarding a disability or physical or mental
14	condition under any other law, or pursuant to an applicable contract or
15	collective bargaining agreement.
16	(8) Retaliation prohibited. An employer, employment agency, or labor
17	organization shall not discharge or in any other manner discriminate against
18	any employee because the employee:
19	* * *
20	(i) An agreement to settle a claim of a violation of subsection (a) of this
21	section shall not prohibit, prevent, or otherwise restrict the employee from

1	working for the employer or any parent company, subsidiary, division, or
2	affiliate of the employer. Any provision of an agreement to settle a claim of a
3	violation of subsection (a) of this section that violates this subsection shall be
4	void and unenforceable with respect to the individual who made the claim.
5	(j) Except for claims alleging a violation of subdivision (a)(7) of this
6	section, an employee shall not be required to demonstrate the existence of
7	another employee or individual to whom the employee's treatment can be
8	compared to establish a violation of this section.
9	(k) Notwithstanding any State or federal judicial precedent to the contrary:
10	(1) harassment and discrimination need not be severe or pervasive to
11	constitute a violation of this section; and
12	(2) behavior that a reasonable employee with the same protected
13	characteristic would consider to be a petty slight or trivial inconvenience shall
14	not constitute unlawful harassment or discrimination pursuant to this section.
15	Sec. 2. 21 V.S.A. § 495d is amended to read:
16	§ 495d. DEFINITIONS
17	As used in this subchapter:
18	* * *
19	(13)(A) "Sexual harassment" is a form of sex discrimination and means
20	unwelcome sexual advances, requests for sexual favors, and other verbal or.
21	physical, written, auditory, or visual conduct of a sexual nature when:

1	(A)(i) submission to that conduct is made either explicitly or
2	implicitly a term or condition of employment;
3	(B)(ii) submission to or rejection of such conduct by an individual is
4	used as a component of the basis for employment decisions affecting that
5	individual; or
6	(C)(iii) the conduct has the purpose or effect of substantially
7	interfering with an individual's work performance or creating an intimidating,
8	hostile, or offensive work environment.
9	(B) Sexual harassment need not be severe or pervasive in order to be
10	unlawful pursuant to this subchapter.
11	* * *
12	(16) "Harass" means to engage in unwelcome conduct based on an
13	employee's race, color, religion, national origin, sex, sexual orientation, gender
14	identity, ancestry, place of birth, age, crime victim status, or physical or mental
15	condition that interferes with the employee's work or creates a work
16	environment that is intimidating, hostile, or offensive. In determining whether
17	conduct constitutes harassment:
18	(A) The determination shall be made on the basis of the record as a
19	whole, according to the totality of the circumstances, and a single incident may
20	constitute unlawful harassment.

1	(B) Incidents that may be harassment shall be considered in the
2	aggregate with varying types of conduct and conduct based on multiple
3	characteristics viewed in totality, rather than in isolation.
4	(C) Conduct may constitute harassment, regardless of whether:
5	(i) the complaining employee is the individual being harassed;
6	(ii) the complaining employee acquiesced or otherwise submitted
7	to or participated in the conduct;
8	(iii) the conduct is also experienced by others outside the
9	protected class involved in the conduct;
10	(iv) the complaining employee was able to continue carrying out
11	the employee's job duties and responsibilities despite the conduct;
12	(v) the conduct resulted in a physical or psychological injury; or
13	(vi) the conduct occurred outside the workplace.
14	Sec. 3. 9 V.S.A. § 4501 is amended to read:
15	§ 4501. DEFINITIONS
16	As used in this chapter:
17	* * *
18	(12)(A) "Harass" means to engage in unwelcome conduct that detracts
19	from, undermines, or interferes with a person's:
20	(i) use of a place of public accommodation or any of the
21	accommodations, advantages, facilities, or privileges of a place of public

1	accommodation because of the person's race, creed, color, national origin,
2	marital status, sex, sexual orientation, gender identity, or disability; or
3	(ii) terms, conditions, privileges, or protections in the sale or rental
4	of a dwelling or other real estate, or in the provision of services or facilities in
5	connection with a dwelling or other real estate, because of the person's race,
6	sex, sexual orientation, gender identity, age, marital status, religious creed,
7	color, national origin, or disability, or because the person intends to occupy a
8	dwelling with one or more minor children, or because the person is a recipient
9	of public assistance, or because the person is a victim of abuse, sexual assault,
10	or stalking.
11	(B) Notwithstanding any judicial precedent to the contrary, harassing
12	conduct need not be severe or pervasive to be unlawful pursuant to the
13	provisions of this chapter. In determining whether conduct constitutes
14	unlawful harassment:
15	(i) The determination shall be made on the basis of the record as a
16	whole, according to the totality of the circumstances, and a single incident may
17	constitute unlawful harassment.
18	(ii) Incidents that may be harassment shall be considered in the
19	aggregate with varying types of conduct and conduct based on multiple
20	characteristics viewed in totality, rather than in isolation.

1	(iii) Conduct may constitute unlawful harassment, regardless of
2	whether:
3	(I) the complaining person is the person being harassed;
4	(II) the complaining person acquiesced or otherwise submitted
5	to or participated in the conduct;
6	(III) the conduct is also experienced by others outside the
7	protected class involved in the conduct;
8	(IV) despite the conduct, the complaining person was able to:
9	(aa) use the place of public accommodation or any of the
10	accommodations, advantages, facilities, or privileges of the place of public
11	accommodation; or
12	(bb) enjoy the benefit of applicable terms, conditions,
13	privileges, or protections in the sale or rental of the dwelling or other real
14	estate, or to obtain services or facilities in connection with the dwelling or
15	other real estate;
16	(V) the conduct resulted in a physical or psychological injury;
17	<u>or</u>
18	(VI) the conduct occurred outside the place of public
19	accommodation or the dwelling or other real estate.

1	(C) Behavior that a reasonable person with the same protected
2	characteristic would consider to be a petty slight or trivial inconvenience shall
3	not constitute unlawful harassment or discrimination pursuant to this chapter.
4	(D) The provisions of this subdivision (12) shall not apply to any
5	action brought under this chapter pursuant to the provisions of 16 V.S.A.
6	<u>§ 570f.</u>
7	Sec. 4. 9 V.S.A. § 4503 is amended to read:
8	§ 4503. UNFAIR HOUSING PRACTICES
9	* * *
10	(d)(1) As used in this section, "harass" means to engage in unwelcome
11	conduct that detracts from, undermines, or interferes with the person's terms,
12	conditions, privileges, or protections in the sale or rental of a dwelling or other
13	real estate, or in the provision of services or facilities in connection with a
14	dwelling or other real estate, because of the person's race, sex, sexual
15	orientation, gender identity, age, marital status, religious creed, color, national
16	origin, or disability, or because the person intends to occupy a dwelling with
17	one or more minor children, or because the person is a recipient of public
18	assistance, or because the person is a victim of abuse, sexual assault, or
19	stalking.
20	(2) Notwithstanding any judicial precedent to the contrary, harassing
21	conduct need not be severe or pervasive to be unlawful pursuant to the

1	provisions of this section. In determining whether conduct constitutes
2	unlawful harassment:
3	(A) The determination shall be made on the basis of the record as a
4	whole, according to the totality of the circumstances, and a single incident may
5	constitute unlawful harassment.
6	(B) Incidents that may be harassment shall be considered in the
7	aggregate with varying types of conduct and conduct based on multiple
8	characteristics viewed in totality, rather than in isolation.
9	(C) Conduct may constitute unlawful harassment, regardless of
10	whether:
11	(i) the complaining person is the person being harassed;
12	(ii) the complaining person acquiesced or otherwise submitted to
13	or participated in the conduct;
14	(iii) the conduct is also experienced by others outside the
15	protected class involved in the conduct;
16	(iv) the complaining person was able to enjoy the benefit of
17	applicable terms, conditions, privileges, or protections in the sale or rental of
18	the dwelling or other real estate, or to obtain services or facilities in connection
19	with the dwelling or other real estate, despite the conduct;
20	(v) the conduct resulted in a physical or psychological injury; or
21	(vi) the conduct occurred outside the dwelling or other real estate.

1	(3) behavior that a reasonable person with the same protected
2	characteristic would consider to be a petty slight or trivial inconvenience shall
3	not constitute unlawful harassment or discrimination pursuant to this section.
4	[Repealed.]
5	Sec. 5. EFFECTIVE DATE
6	This act shall take effect on July 1, 2023.
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13	(Committee vote:)
14	
15	Senator
16	FOR THE COMMITTEE