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S.103

An act relating to amending the prohibitions against discrimination

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 495 is amended to read:

§ 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;

\* \* \*

(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise 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;

(4) For any labor organization; to limit, segregate, or qualify its membership with respect to any individual because of race, color, religion,

1 ancestry, national origin, sex, sexual orientation, gender identity, place of birth,  
2 crime victim status, or age ~~to discriminate against any individual or against a~~  
3 ~~qualified individual with a disability or to limit, segregate, or qualify its~~  
4 ~~membership;~~ or against a qualified individual with a disability.

5 \* \* \*

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

17 (A) An employer may pay different wage rates under this subsection  
18 when the differential wages are made pursuant to:

19 \* \* \*

20 (iv) A bona fide factor other than sex, race, national origin, or  
21 physical or mental condition. An employer asserting that differential wages

1 are paid pursuant to this subdivision (7)(A)(iv) shall demonstrate that the factor  
2 does not perpetuate a ~~sex-based~~ differential in compensation; based on sex,  
3 race, national origin, or physical or mental condition; is job-related with  
4 respect to the position in question; and is based upon a legitimate business  
5 consideration.

6 \* \* \*

7 (C) Nothing in this section shall be construed to diminish an  
8 employee's right to privacy regarding a disability or physical or mental  
9 condition under any other law, or pursuant to an applicable contract or  
10 collective bargaining agreement.

11 (8) ~~Retaliation prohibited.~~ An employer, employment agency, or labor  
12 organization shall not discharge or in any other manner discriminate against  
13 any employee because the employee:

14 \* \* \*

15 (i) An agreement to settle a claim of a violation of subsection (a) of this  
16 section shall not prohibit, prevent, or otherwise restrict the employee from  
17 working for the employer or any parent company, subsidiary, division, or  
18 affiliate of the employer. Any provision of an agreement to settle a claim of a  
19 violation of subsection (a) of this section that violates this subsection shall be  
20 void and unenforceable with respect to the individual who made the claim.

21 (j) Except for claims alleging a violation of subdivision (a)(7) of this

1 section, an employee shall not be required to demonstrate the existence of  
2 another employee or individual to whom the employee's treatment can be  
3 compared to establish a violation of this section.

4 (k) Notwithstanding any State or federal judicial precedent to the contrary:

5 (1) harassment and discrimination need not be severe or pervasive to  
6 constitute a violation of this section; and

7 (2) behavior that a reasonable employee with the same protected  
8 characteristic would consider to be a petty slight or trivial inconvenience shall  
9 not constitute unlawful harassment or discrimination pursuant to this section.

10 Sec. 2. 21 V.S.A. § 495d is amended to read:

11 § 495d. DEFINITIONS

12 As used in this subchapter:

13 \* \* \*

14 (13)(A) "Sexual harassment" is a form of sex discrimination and means  
15 unwelcome sexual advances, requests for sexual favors, and other verbal ~~or~~  
16 physical, written, auditory, or visual conduct of a sexual nature when:

17 ~~(A)~~(i) submission to that conduct is made either explicitly or  
18 implicitly a term or condition of employment;

19 ~~(B)~~(ii) submission to or rejection of such conduct by an individual is  
20 used as a component of the basis for employment decisions affecting that  
21 individual; or



1 to or participated in the conduct;

2 (iii) the conduct is also experienced by others outside the  
3 protected class involved in the conduct;

4 (iv) the complaining employee was able to continue carrying out  
5 the employee's job duties and responsibilities despite the conduct;

6 (v) the conduct resulted in a physical or psychological injury; or

7 (vi) the conduct occurred outside the workplace.

8 Sec. 3. 9 V.S.A. § 4501 is amended to read:

9 § 4501. DEFINITIONS

10 As used in this chapter:

11 \* \* \*

12 (12)(A) "Harass" means to engage in unwelcome conduct that detracts  
13 from, undermines, or interferes with a person's:

14 (i) use of a place of public accommodation or any of the  
15 accommodations, advantages, facilities, or privileges of a place of public  
16 accommodation because of the person's race, creed, color, national origin,  
17 marital status, sex, sexual orientation, gender identity, or disability; or

18 (ii) terms, conditions, privileges, or protections in the sale or rental  
19 of a dwelling or other real estate, or in the provision of services or facilities in  
20 connection with a dwelling or other real estate, because of the person's race,  
21 sex, sexual orientation, gender identity, age, marital status, religious creed,

1 color, national origin, or disability, or because the person intends to occupy a  
2 dwelling with one or more minor children, or because the person is a recipient  
3 of public assistance, or because the person is a victim of abuse, sexual assault,  
4 or stalking.

5 (B) Notwithstanding any judicial precedent to the contrary, harassing  
6 conduct need not be severe or pervasive to be unlawful pursuant to the  
7 provisions of this chapter. In determining whether conduct constitutes  
8 unlawful harassment:

9 (i) The determination shall be made on the basis of the record as a  
10 whole, according to the totality of the circumstances, and a single incident may  
11 constitute unlawful harassment.

12 (ii) Incidents that may be harassment shall be considered in the  
13 aggregate with varying types of conduct and conduct based on multiple  
14 characteristics viewed in totality, rather than in isolation.

15 (iii) Conduct may constitute unlawful harassment, regardless of  
16 whether:

17 (I) the complaining person is the person being harassed;

18 (II) the complaining person acquiesced or otherwise submitted  
19 to or participated in the conduct;

20 (III) the conduct is also experienced by others outside the  
21 protected class involved in the conduct;

1                     (IV) despite the conduct, the complaining person was able to:

2                             (aa) use the place of public accommodation or any of the  
3                     accommodations, advantages, facilities, or privileges of the place of public  
4                     accommodation; or

5                             (bb) enjoy the benefit of applicable terms, conditions,  
6                     privileges, or protections in the sale or rental of the dwelling or other real  
7                     estate, or to obtain services or facilities in connection with the dwelling or  
8                     other real estate;

9                             (V) the conduct resulted in a physical or psychological injury;  
10                     or

11                             (VI) the conduct occurred outside the place of public  
12                     accommodation or the dwelling or other real estate.

13                             (C) Behavior that a reasonable person with the same protected  
14                     characteristic would consider to be a petty slight or trivial inconvenience shall  
15                     not constitute unlawful harassment or discrimination pursuant to this chapter.

16                             (D) The provisions of this subdivision (12) shall not apply to any  
17                     action brought under this chapter pursuant to the provisions of 16 V.S.A.  
18                     § 570f.

19             Sec. 4. 9 V.S.A. § 4503 is amended to read:

20             § 4503. UNFAIR HOUSING PRACTICES

21                                                             \* \* \*



1           ~~(d)(1) As used in this section, “harass” means to engage in unwelcome~~  
2           ~~conduct that detracts from, undermines, or interferes with the person’s terms,~~  
3           ~~conditions, privileges, or protections in the sale or rental of a dwelling or other~~  
4           ~~real estate, or in the provision of services or facilities in connection with a~~  
5           ~~dwelling or other real estate, because of the person’s race, sex, sexual~~  
6           ~~orientation, gender identity, age, marital status, religious creed, color, national~~  
7           ~~origin, or disability, or because the person intends to occupy a dwelling with~~  
8           ~~one or more minor children, or because the person is a recipient of public~~  
9           ~~assistance, or because the person is a victim of abuse, sexual assault, or~~  
10           ~~stalking.~~

11           ~~(2) 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 section. In determining whether conduct constitutes~~  
14           ~~unlawful harassment:~~

15           ~~(A) 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           ~~(B) 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.~~

21           ~~(C) Conduct may constitute unlawful harassment, regardless of~~

1       whether:

2                   ~~(i) the complaining person is the person being harassed;~~

3                   ~~(ii) the complaining person acquiesced or otherwise submitted to~~  
4       ~~or participated in the conduct;~~

5                   ~~(iii) the conduct is also experienced by others outside the~~  
6       ~~protected class involved in the conduct;~~

7                   ~~(iv) the complaining person was able to enjoy the benefit of~~  
8       ~~applicable terms, conditions, privileges, or protections in the sale or rental of~~  
9       ~~the dwelling or other real estate, or to obtain services or facilities in connection~~  
10      ~~with the dwelling or other real estate, despite the conduct;~~

11                  ~~(v) the conduct resulted in a physical or psychological injury; or~~

12                  ~~(vi) the conduct occurred outside the dwelling or other real estate.~~

13                  ~~(3) behavior that a reasonable person with the same protected~~  
14      ~~characteristic would consider to be a petty slight or trivial inconvenience shall~~  
15      ~~not constitute unlawful harassment or discrimination pursuant to this section.~~

16      [Repealed.]

17      Sec. 5. EFFECTIVE DATE

18                  This act shall take effect on July 1, 2023.