

1 TO THE HONORABLE SENATE:

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

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

8 § 495. UNLAWFUL EMPLOYMENT PRACTICE

9 (a) It shall be unlawful employment practice, except where a bona fide  
10 occupational qualification requires persons of a particular race, color, religion,  
11 national origin, sex, sexual orientation, gender identity, ancestry, place of birth,  
12 age, crime victim status, or physical or mental condition:

13 (1) For any employer, employment agency, or labor organization to  
14 harass or discriminate against any individual because of race, color, religion,  
15 ancestry, national origin, sex, sexual orientation, gender identity, place of birth,  
16 crime victim status, or age or against a qualified individual with a disability;

17 \* \* \*

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

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

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

9 \* \* \*

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



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 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 or

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



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: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE