

1 H.99

2 Introduced by Representatives Krowinski of Burlington, Burke of Brattleboro,  
3 Buxton of Tunbridge, Clarkson of Woodstock, Cole of  
4 Burlington, French of Randolph, Lanpher of Vergennes, Lenes  
5 of Shelburne, Macaig of Williston, Martin of Springfield,  
6 McCormack of Burlington, Michelsen of Hardwick, Mook of  
7 Bennington, Moran of Wardsboro, Myers of Essex, O'Sullivan  
8 of Burlington, Pearson of Burlington, Poirier of Barre City,  
9 Pugh of South Burlington, Ram of Burlington, Sharpe of  
10 Bristol, South of St. Johnsbury, Stevens of Waterbury, Taylor  
11 of Barre City, Till of Jericho, Townsend of South Burlington,  
12 Weed of Enosburgh, Wizowaty of Burlington, and Zagar of  
13 Barnard

14 Referred to Committee on

15 Date:

16 Subject: Labor; equal pay; workplace protections

17 Statement of purpose of bill as introduced: This bill proposes to clarify and  
18 strengthen existing laws regarding equal pay and the prohibition of  
19 discrimination in employment, housing, and public accommodations.

1 An act relating to equal pay

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

3 Sec. 1. FINDINGS

4 The General Assembly finds:

5 (1) Pay inequity has been illegal since President Kennedy signed the  
6 Equal Pay Act in 1963 and Vermont outlawed pay discrimination in the Fair  
7 Employment Act the same year. In 1965, President Johnson signed Executive  
8 Order 11246, which requires federal contractors to certify their compliance  
9 with federal nondiscrimination laws, including the Equal Pay Act.

10 (2) Notwithstanding these laws and notwithstanding the fact that women  
11 today make up nearly half of the workforce, pay inequity remains a persistent  
12 problem. Nationally, women earn roughly 78 percent of what their male  
13 counterparts earn. In Vermont, women fare only slightly better, earning  
14 roughly 84 cents per dollar earned by men, according to the National  
15 Partnership for Women and Families.

16 (3) Pay inequity affects all households. Nationally nearly 40 percent of  
17 mothers bring home the majority of their family's earnings, and nearly 63  
18 percent of mothers bring home at least a quarter of their family's income.

19 (4) Research has shown that pay inequity may arise even if an employer  
20 does not specifically intend to discriminate against workers based on sex. For  
21 example, some employees may not have a fair opportunity to negotiate pay

1 because they lack the opportunity to know what similarly situated employees  
2 earn. Other employees may avoid or be channeled into lower-paying  
3 assignments or career paths that are viewed as more compatible with family  
4 needs. Other employees may temporarily drop out of the workforce because  
5 there is insufficient workplace flexibility; when such employees do return to  
6 the workforce, they may be unable to catch up to employees performing the  
7 same work.

8 (5) A number of European countries, such as Great Britain, France, and  
9 Germany, have successfully implemented laws that grant employees the right  
10 to ask for flexible workplace arrangements without fear of retaliation and that  
11 require employers to consider such requests in good faith. Employers with  
12 flexible, family-friendly policies tend to have lower rates of absenteeism,  
13 lower rates of employee turnover, and higher worker productivity.

14 (6) Research has also shown that short paid parental leaves tend to keep  
15 women in the labor force longer and that women who take such leaves tend not  
16 to earn less than their male counterparts.

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

18 § 495. UNLAWFUL EMPLOYMENT PRACTICE

19 (a) It shall be unlawful employment practice, except where a bona fide  
20 occupational qualification requires persons of a particular race, color, religion,

1 national origin, sex, sexual orientation, gender identity, ancestry, place of birth,  
2 age, or physical or mental condition:

3 \* \* \*

4 ~~(5) For any employer, employment agency, or labor organization to~~  
5 ~~discharge or in any other manner discriminate against any employee because~~  
6 ~~such employee has lodged a complaint of discriminatory acts or practices or~~  
7 ~~has cooperated with the attorney general or a state's attorney in an~~  
8 ~~investigation of such practices, or is about to lodge a complaint or cooperate in~~  
9 ~~an investigation, or because such employer believes that such employee may~~  
10 ~~lodge a complaint or cooperate with the attorney general or state's attorney in~~  
11 ~~an investigation of discriminatory acts or practices;~~

12 ~~(6)~~ For any employer, employment agency, labor organization, or  
13 person seeking employees to discriminate against, indicate a preference or  
14 limitation, refuse properly to classify or refer, or to limit or segregate  
15 membership, on the basis of a person's having a positive test result from an  
16 HIV-related blood test;

17 ~~(7)~~(6) For any employer, employment agency, labor organization, or  
18 person seeking employees to request or require an applicant, prospective  
19 employee, employee, prospective member, or member to have an HIV-related  
20 blood test as a condition of employment or membership, classification,  
21 placement, or referral;

1           ~~(8)~~(7) For any employer, employment agency, labor organization, or  
2 person seeking employees to discriminate between employees on the basis of  
3 sex by paying wages to employees of one sex at a rate less than the rate paid to  
4 employees of the other sex for equal work that requires equal skill, effort, and  
5 responsibility; and is performed under similar working conditions. An  
6 employer who is paying wages in violation of this section shall not reduce the  
7 wage rate of any other employee in order to comply with this subsection.

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

10           (i) A seniority system.

11           (ii) A merit system.

12           (iii) A system in which earnings are based on quantity or quality  
13 of production.

14           (iv) ~~Any factor other than sex~~ A differential system based upon a  
15 bona fide factor other than sex, including education, training, or experience.

16 An employer asserting that differential wages are paid pursuant to this  
17 subdivision shall demonstrate that the factor is not based on or derived from a  
18 sex-based differential in compensation and is related to the employment and  
19 consistent with a business necessity. An employee may demonstrate that an  
20 alternative employment practice exists that would serve the employment

1 purpose without producing a differential compensation and that the employer  
2 has refused to adopt the alternative practice.

3 (B) No employer may do any of the following:

4 (i) Require, as a condition of employment, that an employee  
5 refrain from disclosing the amount of his or her wages or from inquiring about  
6 or discussing the wages of other employees.

7 (ii) Require an employee to sign a waiver or other document that  
8 purports to deny the employee the right to disclose the amount of his or her  
9 wages or to inquire about or discuss the wages of other employees.

10 ~~(iii) Discharge, formally discipline, or otherwise discriminate~~  
11 ~~against an employee who discloses the amount of his or her wages.~~

12 (8) Retaliation prohibited. A person shall not retaliate against, coerce,  
13 intimidate, threaten, or interfere with an individual who:

14 (A) has opposed any act or practice that is prohibited under this chapter;

15 (B) has lodged a complaint or has testified, assisted, or participated in  
16 any manner with the Attorney General, a state's attorney, or the Human Rights  
17 Commission in an investigation of prohibited acts or practices;

18 (C) is known by the person to be about to lodge a complaint, testify,  
19 assist, or participate in any manner in an investigation of prohibited acts or  
20 practices;



1 and the penalty and enforcement provisions of section 495b of this title shall  
2 apply to this section.

3 \* \* \*

4 Sec. 5. 21 V.S.A. § 472b is amended to read:

5 § 472b. TOWN MEETING LEAVE; EMPLOYEES; STUDENTS

6 (a) Subject to the essential operation of a business or entity of state or local  
7 government, which shall prevail in any instance of conflict, an employee shall  
8 have the right to take unpaid leave from employment under this section or  
9 subsection 472(b) of this title for the purpose of attending his or her annual  
10 town meeting, provided the employee notifies the employer at least seven days  
11 prior to the date of the town meeting. ~~An employer shall not discharge or in~~  
12 ~~any other manner retaliate against an employee for exercising the right~~  
13 ~~provided by this section.~~

14 \* \* \*

15 Sec. 6. 21 V.S.A. § 309 is added to read:

16 § 309. FLEXIBLE WORKING ARRANGEMENTS

17 (a) An employee may not more than twice per calendar year request a  
18 flexible working arrangement that meets the needs of the employer and  
19 employee.

20 (b) As used in this section, “flexible working arrangement” means  
21 intermediate or long-term changes in the employee’s regular working



1 arrangements including changes in the number of days or hours worked,  
2 changes in the time the employee arrives at or departs from work, work from  
3 home, or job-sharing. “Flexible working arrangement” does not include  
4 vacation or another form of employee leave.

5 (c) Within 30 days of receiving a request for a flexible working  
6 arrangement, the employer shall meet with the employee to discuss the request  
7 in good faith. The employer and employee may propose alternative  
8 arrangements during the meeting.

9 (d) Within 14 days of the meeting described in subsection (c) of this  
10 section, the employer shall notify the employee of the decision regarding the  
11 request. If the request was submitted in writing, the employer shall state any  
12 complete or partial denial of the request in writing.

13 (e) The employer shall grant the employee’s request for a flexible working  
14 arrangement unless doing so is inconsistent with its business operations or its  
15 legal or contractual obligations.

16 (f) This section shall not diminish any rights under this chapter or pursuant  
17 to a collective bargaining agreement.

18 (g) An employer shall not retaliate against an employee exercising his or  
19 her rights under this section. The provisions against retaliation in subdivision  
20 495(a)(8) of this title and the penalty and enforcement provisions of section  
21 495b of this title shall apply to this section.

1 Sec. 7. 21 V.S.A. § 473 is amended to read:

2 § 473. RETALIATION PROHIBITED

3 An employer shall not discharge or in any other manner retaliate against an  
4 employee ~~because:~~

5 ~~(1) the employee lodged a complaint of a violation of a provision of this~~  
6 ~~subchapter; or~~

7 ~~(2) the employee has cooperated with the attorney general or a state's~~  
8 ~~attorney in an investigation of a violation of a provision of this subchapter; or~~

9 ~~(3) the employer believes that the employee may lodge a complaint or~~  
10 ~~cooperate in an investigation of a violation of a provision of who exercises or~~  
11 ~~attempts to exercise his or her rights under this subchapter. The provisions~~  
12 ~~against retaliation in subdivision 495(a)(8) of this title and the penalty and~~  
13 ~~enforcement provisions of section 495b of this title shall apply to this~~  
14 ~~subchapter.~~

15 Sec. 8. 21 V.S.A. § 474 is amended to read:

16 § 474. PENALTIES AND ENFORCEMENT

17 ~~(a) The attorney general or a state's attorney may enforce the provisions of~~  
18 ~~this subchapter by bringing a civil action for temporary or permanent~~  
19 ~~injunctive relief, economic damages, including prospective lost wages for a~~  
20 ~~period not to exceed one year, and court costs. The attorney general or a~~  
21 ~~state's attorney may conduct an investigation to obtain voluntary conciliation~~

1 ~~of an alleged violation. Such investigation shall not be a prerequisite to the~~  
2 ~~bringing of a court action.~~

3 ~~(b) As an alternative to subsection (a) of this section, an employee entitled~~  
4 ~~to leave under this subchapter who is aggrieved by a violation of a provision of~~  
5 ~~this subchapter may bring a civil action for temporary or permanent injunctive~~  
6 ~~relief, economic damages, including prospective lost wages for a period not to~~  
7 ~~exceed one year, attorney fees and court costs. The provisions against~~  
8 ~~retaliation in subdivision 495(a)(8) of this title and the penalty and~~  
9 ~~enforcement provisions of section 495b of this title shall apply to this~~  
10 ~~subchapter.~~

11 ~~(e)(b)~~ An employer may bring a civil action to recover compensation paid  
12 to the employee during leave, except payments made for accrued sick leave or  
13 vacation leave; and court costs to enforce the provisions of subsection 472(h)  
14 of this title.

15 Sec. 9. 21 V.S.A. § 710 is amended to read:

16 § 710. UNLAWFUL DISCRIMINATION

17 \* \* \*

18 (b) No person shall discharge or discriminate against an employee from  
19 employment because such employee asserted or attempted to assert a claim for  
20 benefits under this chapter or under the law of any state or under the United  
21 States.

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(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

Sec. 10. 9 V.S.A. § 4502 is amended to read:

§ 4502. PUBLIC ACCOMMODATIONS

\* \* \*

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

\* \* \*

~~(4) No public accommodation shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this section or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. No public accommodation shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised or enjoyed or on account of his or her having aided~~

1 ~~or encouraged any other individual in the exercise or enjoyment of any right~~  
2 ~~granted or protected by this section. [Repealed.]~~

3 \* \* \*

4 Sec. 11. 9 V.S.A. § 4503 is amended to read:

5 § 4503. UNFAIR HOUSING PRACTICES

6 (a) It shall be unlawful for any person:

7 \* \* \*

8 ~~(5) To coerce, intimidate, threaten, or interfere with any person in the~~  
9 ~~exercise or enjoyment of any right granted or protected by this chapter or for~~  
10 ~~having filed a charge, testified, or cooperated in any investigation or~~  
11 ~~enforcement action pursuant to chapter 139 or 141 of this title. [Repealed.]~~

12 \* \* \*

13 Sec. 12. 9 V.S.A. § 4506 is amended to read:

14 § 4506. ENFORCEMENT; CIVIL ACTION; RETALIATION PROHIBITED

15 \* \* \*

16 (e) Retaliation prohibited. A person shall not retaliate against, coerce,  
17 intimidate, threaten, or interfere with an individual who:

18 (1) has opposed any act or practice that is prohibited under sections  
19 4502 or 4503 of this title;

20 (2) has lodged a complaint or has testified, assisted, or participated in  
21 any manner with the Attorney General, a state's attorney, or the Human Rights

1 Commission in an investigation of acts or practices prohibited by chapter 139  
2 of this title;

3 (3) is known by the person to be about to lodge a complaint, testify,  
4 assist, or participate in any manner in an investigation of acts or practices  
5 prohibited by chapter 139 of this title; or

6 (4) is believed by the person to have acted as described in subdivisions  
7 (1) through (3) of this subsection.

8 Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

9 (a) A Committee is established to study the issue of paid family leave in  
10 Vermont and to make recommendations regarding whether and how paid  
11 family leave may benefit Vermont citizens.

12 (b) The Committee shall examine:

13 (1) existing paid leave laws and proposed paid leave legislation in other  
14 states;

15 (2) which employees should be eligible for paid leave benefits;

16 (3) the appropriate level of wage replacement for eligible employees;

17 (4) the appropriate duration of paid leave benefits;

18 (5) mechanisms for funding paid leave through employee contributions;

19 (6) administration of paid leave benefits;

20 (7) transitioning to a funded paid leave program; and

21 (8) any other issues relevant to paid leave.

1       (c) The Committee shall make recommendations including proposed  
2       legislation to address paid family leave in Vermont.

3       (d) The Committee shall consist of the following members:

4           (1) two members of the House of Representatives chosen by the  
5       Speaker;

6           (2) two members of the Senate chosen by the Committee on  
7       Committees;

8           (3) two representatives from the business community, one appointed by  
9       the Speaker and one by the Committee on Committees;

10          (4) two representatives from labor organizations, one appointed by the  
11       Speaker and one by the Committee on Committees;

12          (5) two representatives appointed by the Governor;

13          (6) the Attorney General or designee;

14          (7) the Commissioner of Labor or designee;

15          (8) the Executive Director of the Vermont Commission on Women or  
16       designee;

17          (9) the Executive Director of the Human Rights Commission; and

18          (10) one representative of the advocacy community appointed by the  
19       Vermont Commission on Women.

20       (e) The Committee shall convene its first meeting on or before  
21       September 1, 2013. The Commissioner of Labor or designee shall be

1 designated Chair of the Committee and shall convene the first and subsequent  
2 meetings.

3 (f) The Committee shall report its findings and recommendations on or  
4 before January 15, 2014 to the House Committee on General, Housing and  
5 Military Affairs and the Senate Committee on Economic Development,  
6 Housing and General Affairs.

7 (g) The Committee shall cease to function upon transmitting its report.

8 Sec. 14. EFFECTIVE DATE

9 This act shall take effect on July 1, 2013.