

1 H.707
2 Introduced by Representatives Copeland-Hanzas of Bradford, Turner of
3 Milton, Chesnut-Tangerman of Middletown Springs, Krowinski
4 of Burlington, Sibilina of Dover, Baser of Bristol, Beck of
5 St. Johnsbury, Briglin of Thetford, Buckholz of Hartford,
6 Burditt of West Rutland, Burke of Brattleboro, Canfield of
7 Fair Haven, Christie of Hartford, Cina of Burlington, Colburn
8 of Burlington, Conlon of Cornwall, Connor of Fairfield,
9 Conquest of Newbury, Deen of Westminster, Donovan of
10 Burlington, Grad of Moretown, Haas of Rochester, Harrison of
11 Chittenden, Hill of Wolcott, Hooper of Randolph, Jickling of
12 Randolph, Lanpher of Vergennes, Lippert of Hinesburg, Lucke
13 of Hartford, McCormack of Burlington, McFaun of Barre
14 Town, Miller of Shaftsbury, Morris of Bennington, Mrowicki of
15 Putney, Noyes of Wolcott, Ode of Burlington, Partridge of
16 Windham, Poirier of Barre City, Pugh of South Burlington,
17 Scheu of Middlebury, Sheldon of Middlebury, Stevens of
18 Waterbury, Stuart of Brattleboro, Sullivan of Dorset, Sullivan
19 of Burlington, Till of Jericho, Toll of Danville, Townsend of
20 South Burlington, Troiano of Stannard, Webb of Shelburne,
21 Weed of Enosburgh, Willhoit of St. Johnsbury, Wood of

1 Waterbury, Wright of Burlington, Yantachka of Charlotte, and
2 Young of Glover
3 Referred to Committee on
4 Date:
5 Subject: Labor; employment practices; sexual harassment
6 Statement of purpose of bill as introduced: This bill proposes to prohibit
7 employment agreements from preventing an employee from disclosing sexual
8 harassment; to prohibit employment agreements from containing provisions
9 that waive an employee's rights or remedies with respect to a claim of sexual
10 harassment; to prohibit agreements to settle a sexual harassment claim from
11 prohibiting the employee from working for the employer or an affiliate of the
12 employer; to require agreements to settle a sexual harassment claim to state
13 that the employee may report sexual harassment or cooperate with an
14 investigation of sexual harassment; to require that the parties to an agreement
15 to settle a sexual harassment claim provide notice of the settlement to the
16 Attorney General; to grant the Attorney General and the Human Rights
17 Commission authority to audit workplaces for compliance with the
18 requirements of Vermont's laws related to sexual harassment; to prohibit
19 persons that have contracted for services or labor with an independent
20 contractor from engaging in sexual or other forms of harassment towards the
21 independent contractor; to require the Attorney General and the Human Rights

1 Commission to enhance the mechanisms for reporting instances of
2 discrimination or sexual harassment; to require the Vermont Commission on
3 Women to create an outreach and education program related to reporting
4 sexual harassment; to provide the Attorney General and the Human Rights
5 Commission with notice of and a right to intervene in any action related to
6 sexual harassment that is filed in Superior Court; and to require the
7 Commissioner of Labor to update the model policy and poster related to sexual
8 harassment.

9 An act relating to the prevention of sexual harassment

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

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

12 § 495h. SEXUAL HARASSMENT

13 * * *

14 (c) Employers shall provide individual copies of their written policies to
15 ~~current employees no later than November 1, 1993, and to new employees~~
16 ~~upon their being hired. Employers who have provided individual written~~
17 ~~notice to all employees within the 12 months prior to October 1, 1993, shall~~
18 ~~be exempt from having to provide an additional notice during the 1993~~
19 ~~calendar year.~~

1 * * *

2 ~~(f)(1) Employers and labor organizations are encouraged to conduct an~~
3 ~~education and training program within one year after September 30, 1993 for~~
4 ~~all current employees and members, and for all new employees and members~~
5 ~~thereafter within one year of commencement of employment, that includes at a~~
6 ~~minimum all the information outlined in this section within one year after~~
7 ~~commencement of employment.~~

8 ~~(2) Employers and labor organizations are encouraged to conduct an~~
9 ~~annual education and training program for all employees and members that~~
10 ~~includes at a minimum all the information outlined in this section.~~

11 ~~(3) Employers are encouraged to conduct additional training for current~~
12 ~~supervisory and managerial employees and members within one year of~~
13 ~~September 30, 1993, and for new supervisory and managerial employees and~~
14 ~~members within one year of commencement of employment or membership,~~
15 ~~which should include at a minimum the information outlined in subsection (b)~~
16 ~~of this section and, the specific responsibilities of supervisory and managerial~~
17 ~~employees, and the methods actions that these employees must take to ensure~~
18 ~~immediate and appropriate corrective action in addressing sexual harassment~~
19 ~~complaints.~~

20 ~~(4) Employers, labor organizations, and appropriate State agencies are~~
21 ~~encouraged to cooperate in making this training available.~~

1 (g)(1) An employer shall not require any employee or prospective
2 employee, as a condition of employment, to sign an agreement or waiver that
3 does either of the following:

4 (A) prohibits, prevents, or otherwise restricts the employee or
5 prospective employee from opposing, disclosing, reporting, or participating in
6 an investigation of sexual harassment; or

7 (B) except as otherwise permitted by State or federal law, purports to
8 wave a substantive or procedural right or remedy available to the employee
9 with respect to a claim of sexual harassment.

10 (2) Any provision of an agreement that violates subdivision (1) of this
11 subsection shall be void and unenforceable.

12 (h)(1) An agreement to settle a claim of sexual harassment shall not
13 prohibit, prevent, or otherwise restrict the employee from working for the
14 employer or any parent company, subsidiary, division, or affiliate of the
15 employer.

16 (2) An agreement to settle a sexual harassment claim shall expressly
17 state that it does not prohibit, prevent, or otherwise restrict the employee from
18 doing either of the following:

19 (A) lodging a complaint of sexual harassment committed by any
20 person with the Attorney General, a State's Attorney, the Human Rights
21 Commission, the Equal Employment Opportunity Commission, or any other

1 State or federal agency; or

2 (B) testifying, assisting, or participating in any manner with an
3 investigation related to a claim of sexual harassment conducted by the
4 Attorney General, a State's Attorney, the Human Rights Commission, the
5 Equal Employment Opportunity Commission, or any other State or federal
6 agency.

7 (3) Any provision of an agreement to settle a sexual harassment claim
8 that violates subdivision (1) or (2) of this subsection shall be void and
9 unenforceable.

10 (i)(1) The parties to an agreement to settle a sexual harassment claim shall
11 provide notice of the settlement to the Attorney General within 15 calendar
12 days after entering into the agreement. The notice shall include the date of the
13 settlement, the name of the employer, and the names of all parties to the
14 settlement. The notice shall not be required to include any information
15 relating to the specific details of the claim or to the terms of the settlement.

16 (2) All notices of settlement agreements submitted pursuant to this
17 section and any related records kept by the Attorney General shall be exempt
18 from public inspection and copying under the Public Records Act and shall be
19 kept confidential.

20 (j)(1)(A) For the purpose of assessing compliance with the provisions of
21 this section, the Attorney General or his or her designee, or, if the employer is

1 ~~the State, the Human Rights Commission or its designee, may, upon presenting~~
2 appropriate credentials, at reasonable times and without unduly disrupting
3 business operations enter and inspect any place of business or employment,
4 question any person who is authorized by the employer to receive or
5 investigate complaints of sexual harassment, and examine an employer's
6 records, policies, procedures, and training materials related to the prevention
7 of sexual harassment and the requirements of this section. As used in this
8 subsection, the term "records" includes de-identified data regarding the
9 number of complaints of sexual harassment received and the resolution of each
10 complaint.

11 (B) The employer shall at reasonable times and without unduly
12 disrupting business operations make any persons who are authorized by the
13 employer to receive or investigate complaints of sexual harassment and any
14 records, policies, procedures, and training materials related to the prevention
15 of sexual harassment and the requirements of this section available to the
16 Attorney General or his or her designee or, if the employer is the State, the
17 Human Rights Commission or its designee.

18 (2) Following an inspection and examination pursuant to subdivision (1)
19 of this subsection, the Attorney General or the Human Rights Commission
20 shall notify the employer of the results of the inspection and examination,
21 including any issues or deficiencies identified, provide resources regarding

1 practices and procedures for the prevention of sexual harassment that the
2 employer may wish to adopt or utilize, and identify any technical assistance
3 that the Attorney General or the Human Rights Commission may be able to
4 provide to help the employer address any identified issues or deficiencies. If
5 the Attorney General or the Human Rights Commission determines that it is
6 necessary to ensure the employer's workplace is free from sexual harassment,
7 the employer may be required, for a period of up to three years, to provide an
8 annual education and training program that satisfies the provisions of
9 subsection (f) of this section to all employees or to conduct an annual,
10 anonymous working climate survey, or both.

11 (k) The Attorney General shall adopt rules as necessary to implement the
12 provisions of this section.

13 Sec. 2. 21 V.S.A. chapter 5, subchapter 1A is added to read:

14 Subchapter 1A. Working Conditions for Independent Contractors

15 § 321. SEXUAL HARASSMENT; INDEPENDENT CONTRACTORS

16 (a) As used in this section:

17 (1)(A) "Client" means a person for whom services or labor is performed
18 by an independent contractor.

19 (B) For the purposes of this section, if a client is a private
20 homeowner, an independent contractor hired by the client to perform services
21 or labor in relation to his or her private dwelling shall not be considered an

1 agent of the client with respect to any other independent contractor that the
2 client hires to perform services or labor in relation to his or her private
3 dwelling.

4 (2) "Independent contractor" means an individual who:

5 (A) performs services or labor for a client pursuant to a contract with
6 the client or an agent of the client; and

7 (B) is not an employee as defined in section 495d of this title.

8 (3) "Individual" means:

9 (A) a natural person;

10 (B) a single-member L.L.C. that does not have any employees other
11 than the member; or

12 (C) a corporation with a single shareholder that does not have any
13 employees other than the shareholder.

14 (b) A client, or an agent of a client, shall not:

15 (1) engage in unwelcome sexual advances, requests for sexual favors, or
16 other verbal or physical conduct of a sexual nature with an independent
17 contractor when:

18 (A) submission to the conduct is either implicitly or explicitly a term
19 or condition of the independent contractor's performance of services or labor;

20 (B) submission to or rejection of the conduct by the independent
21 contractor is used as the basis for decisions relating to.

1 (i) whether to enter into a contract with the independent
2 contractor; or

3 (ii) an existing contract with the independent contractor; or

4 (C) the conduct has the purpose or effect of unreasonably interfering
5 with the independent contractor's performance of services or labor by creating
6 an intimidating, hostile, or offensive work environment.

7 (2) subject an independent contractor to any form of harassment based
8 on sex, sexual orientation, or gender identity when the harassment has the
9 purpose or effect of unreasonably interfering with the independent contractor's
10 provision of services by creating an intimidating, hostile, or offensive work
11 environment.

12 (c) The provisions against retaliation by employers in subdivision
13 495(a)(8) of this title shall apply to clients with respect to independent
14 contractors and the penalty and enforcement provisions of section 495b of this
15 title shall apply to this section.

16 Sec. 3. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;

17 ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL
18 HARASSMENT

19 (a) On or before December 15, 2018, the Attorney General and the Human
20 Rights Commission shall develop and implement enhanced mechanisms for
21 employees, independent contractors, and members of the public to submit

1 ~~complaints of discrimination and sexual harassment in employment or in the~~
2 ~~course of an independent contractor relationship.~~

3 ~~(b) The methods shall include, at a minimum, an easy-to-use portal on the~~
4 ~~Attorney General's or Human Rights Commission's website and a telephone~~
5 ~~hotline. Each method shall provide a clear statement that information~~
6 ~~submitted may be referred to the Office of the Attorney General, a State's~~
7 ~~Attorney, the Vermont Human Rights Commission, the Equal Employment~~
8 ~~Opportunity Commission, or another State or federal agency that has~~
9 ~~jurisdiction over the complaint.~~

10 ~~(c) Unless the complainant requests otherwise, if the Attorney General, the~~
11 ~~Human Rights Commission, or the relevant State agency determines that the~~
12 ~~allegations in the complaint state a prima facie claim of unlawful~~
13 ~~discrimination or sexual harassment, it shall, within 30 business days after~~
14 ~~receiving the complaint, provide notice to the complainant's employer or client~~
15 ~~of the complaint and the laws prohibiting retaliation in relation to a complaint~~
16 ~~of discrimination or sexual harassment. The notice shall identify the alleged~~
17 ~~perpetrator of the discrimination or sexual harassment and shall require the~~
18 ~~employer or client to provide the alleged perpetrator with notice of the~~
19 ~~complaint and the laws prohibiting retaliation in relation to a complaint of~~
20 ~~discrimination or sexual harassment.~~

21 ~~Sec. 4. OUTREACH REGARDING ENHANCED REPORTING~~

MECHANISMS

On or before December 15, 2018, the Vermont Commission on Women, in consultation with the Attorney General and the Human Rights Commission, shall develop and implement an outreach and education program designed to make Vermont employees, employers, independent contractors, and clients aware of:

(1) the methods for reporting employment and independent contractor discrimination and sexual harassment; and

(2) where to find information regarding:

(A) the laws related to employment and independent contractor discrimination and sexual harassment; and

(B) best practices for preventing employment and independent contractor discrimination and sexual harassment.

Sec. 5. REPORT REGARDING ENHANCED REPORTING MECHANISMS

On or before January 15, 2020, the Attorney General, in consultation with the Human Rights Commission and the Vermont Commission on Women, shall submit to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs a report regarding the implementation of the enhanced reporting mechanisms for instances of employment and independent contractor discrimination and sexual harassment. The report shall include.

1 ~~(1) a detailed description of how any existing reporting mechanisms~~
2 ~~were enhanced and any new reporting mechanisms that were implemented;~~

3 ~~(2) a summary of changes, if any, in the annual number of complaints of~~
4 ~~employment and independent contractor discrimination and sexual harassment~~
5 ~~received and the number of complaints resulting in an investigation,~~
6 ~~settlement, or State court action during calendar years 2018 and 2019 in~~
7 ~~comparison to calendar years 2016 and 2017;~~

8 ~~(3) the number of employees and independent contractors that reported~~
9 ~~the employment discrimination or sexual harassment to their employer,~~
10 ~~supervisor, or client prior to making a complaint in comparison to the number~~
11 ~~that did not, and the reasons that employees and independent contractors gave~~
12 ~~for not reporting the discrimination or sexual harassment to their employer,~~
13 ~~supervisor, or client prior to making a complaint; and~~

14 ~~(4) any suggestion for legislative action to enhance further the reporting~~
15 ~~mechanisms or to reduce the amount of employment and independent~~
16 ~~contractor discrimination and sexual harassment.~~

17 Sec. 5. 21 V.S.A. § 495m is added to read:

18 § 495m. SEXUAL HARASSMENT COMPLAINTS FILED IN SUPERIOR
19 COURT; NOTICE TO ATTORNEY GENERAL AND HUMAN
20 RIGHTS COMMISSION

21 ~~(a) A person that files a claim of sexual harassment pursuant to section~~

1 ~~495h of this subchapter in which neither the Attorney General nor the Human~~
2 ~~Rights Commission is a party shall provide notice of the action to the Attorney~~
3 ~~General and the Human Rights Commission within 14 days after filing the~~
4 ~~complaint. The notice may be submitted electronically and shall include a~~
5 ~~copy of the filed complaint.~~

6 ~~(b)(1) Upon receiving notice of a complaint in which the State is a party,~~
7 ~~the Human Rights Commission may elect to:~~

8 ~~(A) intervene in the action to seek remedies pursuant to section 495b~~
9 ~~of this chapter; or~~

10 ~~(B) without becoming a party to the action, file a statement with the~~
11 ~~court addressing questions of law related to the provisions of this subchapter.~~

12 ~~(2) Upon receiving notice of a complaint in which the State is not a~~
13 ~~party, the Attorney General may elect to:~~

14 ~~(A) intervene in the action to seek remedies pursuant to section 495b~~
15 ~~of this chapter; or~~

16 ~~(B) without becoming a party to the action, file a statement with the~~
17 ~~court addressing questions of law related to the provisions of this subchapter.~~

18 Sec. 6. COMMISSIONER OF LABOR; POSTER

19 ~~On or before September 15, 2018, the Commissioner of Labor shall update~~
20 ~~the model policy and model poster created pursuant to 21 V.S.A. § 495h(d) to~~
21 ~~reflect the provisions of this act.~~

1
2

~~Sec. 7. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2018.~~

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

~~§ 495h. SEXUAL HARASSMENT~~

~~(a)(1) All employers, employment agencies, and labor organizations have an obligation to ensure a workplace free of sexual harassment.~~

~~(2) All persons who engage a person to perform work or services have an obligation to ensure a working relationship with that person that is free from sexual harassment.~~

~~* * *~~

~~(c)(1) Employers shall provide individual copies of their written policies to current employees no later than November 1, 1993, and to new employees upon their being hired. Employers who have provided individual written notice to all employees within the 12 months prior to October 1, 1993, shall be exempt from having to provide an additional notice during the 1993 calendar year.~~

~~(2) If an employer makes changes to its policy against sexual harassment, it shall provide to all employees a written copy of the updated policy.~~

~~* * *~~

~~(f)(1) Employers and labor organizations are encouraged to conduct an~~

~~education and training program within one year after September 30, 1993, for all current employees and members, and for all new employees and members thereafter within one year of commencement of employment, that includes at a minimum all the information outlined in this section within one year after commencement of employment.~~

~~(2) Employers and labor organizations are encouraged to conduct an annual education and training program for all employees and members that includes at a minimum all the information outlined in this section.~~

~~(3) Employers are encouraged to conduct additional training for current supervisory and managerial employees and members within one year of September 30, 1993, and for new supervisory and managerial employees and members within one year of after commencement of employment or membership, which should include at a minimum the information outlined in subsection (b) of this section and, the specific responsibilities of supervisory and managerial employees, and the ~~methods~~ actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.~~

~~(4) Employers, labor organizations, and appropriate State agencies are encouraged to cooperate in making this training available.~~

~~(g)(1) An employer shall not require any employee or prospective employee, as a condition of employment, to sign an agreement or waiver that~~

does either of the following:

(A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or

(B) except as otherwise permitted by State or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment.

(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable.

(h)(1) An agreement to settle a claim of sexual harassment shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer.

(2) An agreement to settle a sexual harassment claim shall expressly state that:

(A) it does not prohibit, prevent, or otherwise restrict the employee from doing either of the following:

(i) lodging a complaint of sexual harassment committed by any person with the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency, or

~~(ii) testifying, assisting, or participating in any manner with an investigation related to a claim of sexual harassment conducted by the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency; and~~

~~(B) it does not waive any rights or claims that may arise after the date the settlement agreement is executed.~~

~~(3) Any provision of an agreement to settle a sexual harassment claim that violates subdivision (1) or (2) of this subsection shall be void and unenforceable.~~

~~(4) Nothing in subdivision (2) of this subsection shall be construed to prevent an agreement to settle a sexual harassment claim from waiving or releasing the claimant's right to seek or obtain any remedies relating to sexual harassment of the claimant by another party to the agreement that occurred before the date on which the agreement is executed.~~

~~(i)(1)(A) For the purpose of assessing compliance with the provisions of this section, the Attorney General or designee, or, if the employer is the State, the Human Rights Commission or designee, may, with 48 hours' notice, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any person who is authorized by the employer to receive or investigate complaints of sexual~~

~~harassment and examine an employer's records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section. As used in this subsection, the term "records" includes de-identified data regarding the number of complaints of sexual harassment received and the resolution of each complaint.~~

~~(B) The employer shall at reasonable times and without unduly disrupting business operations make any persons who are authorized by the employer to receive or investigate complaints of sexual harassment and any records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section available to the Attorney General or designee or, if the employer is the State, the Human Rights Commission or designee.~~

~~(2) Following an inspection and examination pursuant to subdivision (1) of this subsection, the Attorney General or the Human Rights Commission shall notify the employer of the results of the inspection and examination, including any issues or deficiencies identified, provide resources regarding practices and procedures for the prevention of sexual harassment that the employer may wish to adopt or utilize, and identify any technical assistance that the Attorney General or the Human Rights Commission may be able to provide to help the employer address any identified issues or deficiencies. If the Attorney General or the Human Rights Commission determines that it is~~

~~*necessary to ensure the employer's workplace is free from sexual harassment*~~
~~*the employer may be required, for a period of up to three years, to provide an*~~
~~*annual education and training program that satisfies the provisions of*~~
~~*subsection (f) of this section to all employees or to conduct an annual,*~~
~~*anonymous working-climate survey, or both.*~~

~~*(j) The Attorney General shall adopt rules as necessary to implement the*~~
~~*provisions of this section.*~~

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

§ 495b. PENALTIES AND ENFORCEMENT

~~*(a)(1) The Attorney General or a State's Attorney may enforce the*~~
~~*provisions of this subchapter by restraining prohibited acts, seeking civil*~~
~~*penalties, obtaining assurances of discontinuance, and conducting civil*~~
~~*investigations in accordance with the procedures established in 9 V.S.A.*~~
~~*§§ 2458-2461 as though an unlawful employment practice were an unfair act*~~
~~*in commerce. Any employer, employment agency, or labor organization*~~
~~*complained against shall have the same rights and remedies as specified*~~
~~*therein. The Superior Courts are authorized to impose the same civil penalties*~~
~~*and investigation costs and to order other relief to the State of Vermont or an*~~
~~*aggrieved employee for violations of this subchapter as they are authorized to*~~
~~*impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair*~~
~~*act in commerce. In addition, the Superior Courts may order restitution of*~~

~~wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.~~

~~(2) Any charge or formal complaint filed by the Attorney General or a State's Attorney against a person for unlawful discrimination or sexual harassment in violation of the provisions of this chapter shall include a statement setting forth the prohibition against retaliation pursuant to subdivision 495(a)(8) of this title.~~

~~* * *~~

~~Sec. 3. 9 V.S.A. § 4552 is amended to read:~~

~~§ 4552. DUTIES; JURISDICTION~~

~~* * *~~

~~(b)(1) The Commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate. The Commission shall also have jurisdiction when the party complained against is a State agency in matters for which the Attorney General would otherwise have jurisdiction under subsection (c) of this section.~~

~~(2) In any case relating to unlawful discrimination or sexual harassment in violation of 21 V.S.A. § 495 et seq. that the Commission has jurisdiction over pursuant to this subsection, it shall include a statement setting forth the prohibition against retaliation pursuant to 21 V.S.A. § 495(a)(8) with any~~

~~formal complaint that is sent to a respondent~~

~~(c) All complaints of unlawful discrimination in violation of 21 V.S.A. §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions for workers' compensation discrimination, respectively, and of 21 V.S.A. § 471 et seq. shall be referred to the Attorney General's office, for investigation and enforcement.~~

~~Sec. 4. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;~~

~~ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL
HARASSMENT~~

~~(a) On or before December 15, 2018, the Attorney General and the Human Rights Commission shall develop and implement enhanced mechanisms for employees and members of the public to submit complaints of discrimination and sexual harassment in employment or in the course of a working relationship.~~

~~(b) The methods shall include, at a minimum, an easy-to-use portal on the Attorney General's or Human Rights Commission's website and a telephone hotline. Each method shall provide a clear statement that information submitted may be referred to the Office of the Attorney General, a State's Attorney, the Vermont Human Rights Commission, the Equal Employment Opportunity Commission, or another State or federal agency that has jurisdiction over the complaint.~~

~~Sec. 5. OUTREACH REGARDING ENHANCED REPORTING~~

~~MECHANISMS~~

~~On or before December 15, 2018, the Vermont Commission on Women, in consultation with the Attorney General and the Human Rights Commission, shall develop and implement an outreach and education program designed to make Vermont employees, employers, businesses, and members of the public aware of:~~

~~(1) the methods for reporting employment and work-related discrimination and sexual harassment; and~~

~~(2) where to find information regarding:~~

~~(A) the laws related to employment and work-related discrimination and sexual harassment; and~~

~~(B) best practices for preventing employment and work-related discrimination and sexual harassment.~~

~~Sec. 6. REPORT REGARDING ENHANCED REPORTING MECHANISMS~~

~~On or before January 15, 2020, the Attorney General, in consultation with the Human Rights Commission and the Vermont Commission on Women, shall submit to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs a report regarding the implementation of the enhanced reporting mechanisms for instances of employment and work-related discrimination and~~

~~sexual harassment. The report shall include:~~

~~(1) a detailed description of how any existing reporting mechanisms were enhanced and any new reporting mechanisms that were implemented;~~

~~(2) a summary of changes, if any, in the annual number of complaints of employment and work-related discrimination and sexual harassment received and the number of complaints resulting in an investigation, settlement, or State court action during calendar years 2018 and 2019 in comparison to calendar years 2016 and 2017;~~

~~(3) the number of employees and other persons that reported employment or work-related discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint in comparison to the number that did not, and the reasons that employees and other persons gave for not reporting the discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint; and~~

~~(4) any suggestion for legislative action to enhance further the reporting mechanisms or to reduce the amount of employment and work-related discrimination and sexual harassment.~~

~~Sec. 7. 21 V.S.A. § 495n is added to read:~~

~~§ 495n. SEXUAL HARASSMENT COMPLAINTS FILED IN SUPERIOR~~

~~COURT, NOTICE TO ATTORNEY GENERAL AND HUMAN~~

RIGHTS COMMISSION

(a) A person that files a claim of sexual harassment pursuant to section 495b of this subchapter in which neither the Attorney General nor the Human Rights Commission is a party shall provide notice of the action to the Attorney General and the Human Rights Commission within 14 days after filing the complaint. The notice may be submitted electronically and shall include a copy of the filed complaint.

(b)(1) Upon receiving notice of a complaint in which the State is a party, the Human Rights Commission may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

(2) Upon receiving notice of a complaint in which the State is not a party, the Attorney General may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

Sec. 8. COMMISSIONER OF LABOR; POSTER

On or before September 15, 2018, the Commissioner of Labor shall update

~~the model policy and model poster created pursuant to 21 V.S.A. § 495h(d) to reflect the provisions of this act.~~

Sec. 9. EFFECTIVE DATE

~~This act shall take effect on July 1, 2018.~~

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

§ 495h. SEXUAL HARASSMENT

(a)(1) All employers, employment agencies, and labor organizations have an obligation to ensure a workplace free of sexual harassment.

(2) All persons who engage a person to perform work or services have an obligation to ensure a working relationship with that person that is free from sexual harassment.

* * *

~~*(c)(1) Employers shall provide individual copies of their written policies to current employees no later than November 1, 1993, and to new employees upon their being hired. Employers who have provided individual written notice to all employees within the 12 months prior to October 1, 1993, shall be exempt from having to provide an additional notice during the 1993 calendar year.*~~

(2) If an employer makes changes to its policy against sexual harassment, it shall provide to all employees a written copy of the updated policy.

* * *

(f)(1) Employers and labor organizations are encouraged to conduct an education and training program ~~within one year after September 30, 1993 for all current employees and members, and for all new employees and members thereafter within one year of commencement of employment,~~ that includes at a minimum all the information outlined in this section within one year after commencement of employment.

(2) Employers and labor organizations are encouraged to conduct an annual education and training program for all employees and members that includes at a minimum all the information outlined in this section.

(3) Employers are encouraged to conduct additional training ~~for current supervisory and managerial employees and members within one year of September 30, 1993, and for new supervisory and managerial employees and members within one year of after commencement of employment or membership, which should include at a minimum the information outlined in subsection (b) of this section and,~~ the specific responsibilities of supervisory and managerial employees, and the ~~methods~~ actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(4) Employers, labor organizations, and appropriate State agencies are encouraged to cooperate in making this training available.

(g)(1) An employer shall not require any employee or prospective employee, as a condition of employment, to sign an agreement or waiver that does either of the following:

(A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or

(B) except as otherwise permitted by State or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment.

(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable.

(h)(1) An agreement to settle a claim of sexual harassment shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer.

(2) An agreement to settle a sexual harassment claim shall expressly state that:

(A) it does not prohibit, prevent, or otherwise restrict the individual who made the claim from doing any of the following:

(i) lodging a complaint of sexual harassment committed by any person with the Attorney General, a State's Attorney, the Human Rights

Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(ii) testifying, assisting, or participating in any manner with an investigation related to a claim of sexual harassment conducted by the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(iii) complying with a valid request for discovery in relation to civil litigation or testifying in a hearing or trial related to a claim of sexual harassment that is conducted by a court, pursuant to an arbitration agreement, or before another appropriate tribunal; or

(iv) exercising any right the individual may have pursuant to State or federal labor relations laws to engage in concerted activities with other employees for the purposes of collective bargaining or mutual aid and protection; and

(B) it does not waive any rights or claims that may arise after the date the settlement agreement is executed.

(3) Any provision of an agreement to settle a sexual harassment claim that violates subdivision (1) or (2) of this subsection shall be void and unenforceable with respect to the individual who made the claim.

(4) Nothing in subdivision (2) of this subsection shall be construed to

prevent an agreement to settle a sexual harassment claim from waiving or releasing the claimant's right to seek or obtain any remedies relating to sexual harassment of the claimant by another party to the agreement that occurred before the date on which the agreement is executed.

(i)(1)(A)(i) For the purpose of assessing compliance with the provisions of this section, the Attorney General or designee, or, if the employer is the State, the Human Rights Commission or designee, may, with 48 hours' notice, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any person who is authorized by the employer to receive or investigate complaints of sexual harassment, and examine an employer's records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section.

(ii) An employer may agree to waive or shorten the 48-hour notice period.

(iii) As used in this subsection (i), the term "records" includes de-identified data regarding the number of complaints of sexual harassment received and the resolution of each complaint.

(B) The employer shall at reasonable times and without unduly disrupting business operations make any persons who are authorized by the employer to receive or investigate complaints of sexual harassment and any

records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section available to the Attorney General or designee or, if the employer is the State, the Human Rights Commission or designee.

(2) Following an inspection and examination pursuant to subdivision (1) of this subsection (i), the Attorney General or the Human Rights Commission shall notify the employer of the results of the inspection and examination, including any issues or deficiencies identified, provide resources regarding practices and procedures for the prevention of sexual harassment that the employer may wish to adopt or utilize, and identify any technical assistance that the Attorney General or the Human Rights Commission may be able to provide to help the employer address any identified issues or deficiencies. If the Attorney General or the Human Rights Commission determines that it is necessary to ensure the employer's workplace is free from sexual harassment, the employer may be required, for a period of up to three years, to provide an annual education and training program that satisfies the provisions of subdivision (4) of this subsection to all employees or to conduct an annual, anonymous working-climate survey, or both.

(3)(A) The Attorney General shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A.

§ 2460(a)(4).

(B) The Human Rights Commission shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 4555.

(4) If required by the Attorney General or Human Rights Commission pursuant to subdivision (2) of this subsection, an employer shall conduct:

(A) an annual education and training program for all employees that includes at a minimum all the information outlined in this section; and

(B) an annual education and training program for supervisory and managerial employees that includes at a minimum all the information outlined in this section, the specific responsibilities of supervisory and managerial employees, and the actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(j) The Attorney General shall adopt rules as necessary to implement the provisions of this section.

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

§ 495b. PENALTIES AND ENFORCEMENT

(a)(1) The Attorney General or a State's Attorney may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil

investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though an unlawful employment practice were an unfair act in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified therein. The Superior Courts are authorized to impose the same civil penalties and investigation costs and to order other relief to the State of Vermont or an aggrieved employee for violations of this subchapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(2) Any charge or formal complaint filed by the Attorney General or a State's Attorney against a person for unlawful discrimination or sexual harassment in violation of the provisions of this chapter shall include a statement setting forth the prohibition against retaliation pursuant to subdivision 495(a)(8) of this title.

* * *

Sec. 3. 9 V.S.A. § 4552 is amended to read:

§ 4552. DUTIES; JURISDICTION

* * *

(b)(1) The Commission shall have jurisdiction to investigate and enforce

complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate. The Commission shall also have jurisdiction when the party complained against is a State agency in matters for which the Attorney General would otherwise have jurisdiction under subsection (c) of this section.

(2) In any case relating to unlawful discrimination or sexual harassment in violation of 21 V.S.A. § 495 et seq. that the Commission has jurisdiction over pursuant to this subsection, it shall include a statement setting forth the prohibition against retaliation pursuant to 21 V.S.A. § 495(a)(8) with any formal complaint that is sent to a respondent.

(c) All complaints of unlawful discrimination in violation of 21 V.S.A. §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions for workers' compensation discrimination, respectively, and of 21 V.S.A. § 471 et seq. shall be referred to the Attorney General's office, for investigation and enforcement.

Sec. 4. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;

*ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL
HARASSMENT*

(a) On or before December 15, 2018, the Attorney General and the Human Rights Commission shall develop and implement enhanced mechanisms for employees and members of the public to submit complaints of discrimination

and sexual harassment in employment or in the course of a working relationship.

(b) The methods shall include, at a minimum, an easy-to-use portal on the Attorney General's or Human Rights Commission's website and a telephone hotline. Each method shall provide a clear statement that information submitted may be referred to the Office of the Attorney General, a State's Attorney, the Vermont Human Rights Commission, the Equal Employment Opportunity Commission, or another State or federal agency that has jurisdiction over the complaint.

Sec. 5. PUBLIC EDUCATION AND OUTREACH; VERMONT

COMMISSION ON WOMEN

(a) On or before December 15, 2018, the Vermont Commission on Women, in consultation with the Attorney General and the Human Rights Commission, shall develop a public education and outreach program that is designed to make Vermont employees, employers, businesses, and members of the public aware of:

(1) methods for reporting employment and work-related discrimination and sexual harassment;

(2) where to find information regarding:

(A) the laws related to employment and work-related discrimination and sexual harassment; and

(B) best practices for preventing employment and work-related discrimination and sexual harassment; and

(3) methods for preventing and addressing sexual harassment in the workplace.

(b) The sum of \$125,000.00 is appropriated to the Vermont Commission on Women from the General Fund in fiscal year 2018 to carry forward to fiscal year 2019 for the purpose of creating and implementing the public education and outreach program.

(c) The program may include:

(1) public service announcements;

(2) print and electronic advertisements;

(3) web-based and electronic training materials;

(4) printed informational and training materials;

(5) model educational programs and curricula; and

(6) in-person seminars and workshops.

Sec. 6. REPORT REGARDING ENHANCED REPORTING MECHANISMS

On or before January 15, 2020, the Attorney General, in consultation with the Human Rights Commission and the Vermont Commission on Women, shall submit to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs a report regarding the implementation of the enhanced reporting

mechanisms for instances of employment and work-related discrimination and sexual harassment. The report shall include:

(1) a detailed description of how any existing reporting mechanisms were enhanced and any new reporting mechanisms that were implemented;

(2) a summary of changes, if any, in the annual number of complaints of employment and work-related discrimination and sexual harassment received and the number of complaints resulting in an investigation, settlement, or State court action during calendar years 2018 and 2019 in comparison to calendar years 2016 and 2017;

(3) the number of employees and other persons that reported employment or work-related discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint in comparison to the number that did not, and the reasons that employees and other persons gave for not reporting the discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint; and

(4) any suggestion for legislative action to enhance further the reporting mechanisms or to reduce the amount of employment and work-related discrimination and sexual harassment.

Sec. 7. 21 V.S.A. § 495n is added to read:

§ 495n. SEXUAL HARASSMENT COMPLAINTS; NOTICE TO

ATTORNEY GENERAL AND HUMAN RIGHTS COMMISSION

(a) A person that files a claim of sexual harassment pursuant to section 495b of this subchapter in which neither the Attorney General nor the Human Rights Commission is a party shall provide notice of the action to the Attorney General and the Human Rights Commission within 14 days after filing the complaint. The notice may be submitted electronically and shall include a copy of the filed complaint.

(b)(1) Upon receiving notice of a complaint in which the State is a party, the Human Rights Commission may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

(2) Upon receiving notice of a complaint in which the State is not a party, the Attorney General may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

Sec. 8. COMMISSIONER OF LABOR; POSTER

On or before September 15, 2018, the Commissioner of Labor shall update

the model policy and model poster created pursuant to 21 V.S.A. § 495h(d) to reflect the provisions of this act.

Sec. 9. [Deleted.]

*Sec. 10. PRIOR HARASSMENT CLAIMS; IDENTIFICATION; RELEASE
FROM NONDISCLOSURE AGREEMENT; REPORT*

(a) On or before January 15, 2019, the Office of Legislative Council shall submit a written report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on General, Housing, and Military Affairs that examines mechanisms to:

(1) provide the Attorney General and the Human Rights Commission with notice of agreements to settle sexual harassment claims that contain a provision that prohibits or restricts the individual who made the claim from disclosing information related to the claim of sexual harassment; and

(2) render provisions of agreements to settle sexual harassment claims that prohibit or restrict the individual who made the claim from disclosing information related to the claim of sexual harassment void and unenforceable if, in relation to a separate claim, the alleged harasser is later adjudicated by a court or tribunal of competent jurisdiction to have engaged in sexual harassment or retaliation in relation to a claim of sexual harassment.

(b) In particular, the report shall:

(1) identify potential mechanism to accomplish the potential changes

described in subdivisions (a)(1) and (2) of this section;

(2) review and examine laws and pending legislation in other states that are related to subdivisions (a)(1) and (2) of this section;

(3) identify and examine potential legal issues, advantages, disadvantages, and obstacles to the mechanisms identified; and

(4) identify and examine any alternative mechanisms that would accomplish substantially similar policy outcomes to the potential changes described in subdivisions (a)(1) and (2) of this section.

(c) The Office of Legislative Council shall consult with the Attorney General's Office and the Human Rights Commission when preparing this report.

(d) As used in this section, "information related to the claim of sexual harassment" does not include the specific terms of the related settlement agreement or the amount of any monetary settlement.

Sec. 11. EFFECTIVE DATES

(a) This section and, in Sec. 5, subsection (b) shall take effect on passage. The remaining provisions of Sec. 5 shall take effect on July 1, 2018.

(b) The remaining sections of this act shall take effect on July 1, 2018.