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H.707

Introduced by Representatives Copeland-Hanzas of Bradford, Turner of  
Milton, Chesnut-Tangerman of Middletown Springs, Krowinski  
of Burlington, Sibia of Dover, Baser of Bristol, Beck of  
St. Johnsbury, Briglin of Thetford, Buckholz of Hartford,  
Burditt of West Rutland, Burke of Brattleboro, Canfield of  
Fair Haven, Christie of Hartford, Cina of Burlington, Colburn  
of Burlington, Conlon of Cornwall, Connor of Fairfield,  
Conquest of Newbury, Deen of Westminster, Donovan of  
Burlington, Grad of Moretown, Haas of Rochester, Harrison of  
Chittenden, Hill of Wolcott, Hooper of Randolph, Jickling of  
Randolph, Lanpher of Vergennes, Lippert of Hinesburg, Lucke  
of Hartford, McCormack of Burlington, McFaun of Barre  
Town, Miller of Shaftsbury, Morris of Bennington, Mrowicki of  
Putney, Noyes of Wolcott, Ode of Burlington, Partridge of  
Windham, Poirier of Barre City, Pugh of South Burlington,  
Scheu of Middlebury, Sheldon of Middlebury, Stevens of  
Waterbury, Stuart of Brattleboro, Sullivan of Dorset, Sullivan  
of Burlington, Till of Jericho, Toll of Danville, Townsend of  
South Burlington, Troiano of Stannard, Webb of Shelburne,  
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.~~

20 \* \* \*

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

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

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

19           (4) Employers, labor organizations, and appropriate State agencies are  
20 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       waive 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

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

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

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

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

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

1       (j)(1)(A) For the purpose of assessing compliance with the provisions of  
2       this section, the Attorney General or his or her designee, or, if the employer is  
3       the State, the Human Rights Commission or its designee, may, upon presenting  
4       appropriate credentials, at reasonable times and without unduly disrupting  
5       business operations enter and inspect any place of business or employment,  
6       question any person who is authorized by the employer to receive or  
7       investigate complaints of sexual harassment, and examine an employer’s  
8       records, policies, procedures, and training materials related to the prevention of  
9       sexual harassment and the requirements of this section. As used in this  
10       subsection, the term “records” includes de-identified data regarding the  
11       number of complaints of sexual harassment received and the resolution of each  
12       complaint.

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

20       (2) Following an inspection and examination pursuant to subdivision (1)  
21       of this subsection, the Attorney General or the Human Rights Commission

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

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

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

16 Subchapter 1A. Working Conditions for Independent Contractors

17 § 321. SEXUAL HARASSMENT; INDEPENDENT CONTRACTORS

18 (a) As used in this section:

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

1           (B) For the purposes of this section, if a client is a private  
2           homeowner, an independent contractor hired by the client to perform services  
3           or labor in relation to his or her private dwelling shall not be considered an  
4           agent of the client with respect to any other independent contractor that the  
5           client hires to perform services or labor in relation to his or her private  
6           dwelling.

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

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

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

11          (3) "Individual" means:

12          (A) a natural person;

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

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

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

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

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

3           (B) submission to or rejection of the conduct by the independent  
4           contractor is used as the basis for decisions relating to:

5                   (i) whether to enter into a contract with the independent  
6           contractor; or

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

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

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

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

1       Sec. 3. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;  
2                ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL  
3                HARASSMENT

4                (a) On or before December 15, 2018, the Attorney General and the Human  
5                Rights Commission shall develop and implement enhanced mechanisms for  
6                employees, independent contractors, and members of the public to submit  
7                complaints of discrimination and sexual harassment in employment or in the  
8                course of an independent contractor relationship.

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

16               (c) Unless the complainant requests otherwise, if the Attorney General, the  
17               Human Rights Commission, or the relevant State agency determines that the  
18               allegations in the complaint state a prima facie claim of unlawful  
19               discrimination or sexual harassment, it shall, within 30 business days after  
20               receiving the complaint, provide notice to the complainant's employer or client  
21               of the complaint and the laws prohibiting retaliation in relation to a complaint

1 of discrimination or sexual harassment. The notice shall identify the alleged  
2 perpetrator of the discrimination or sexual harassment and shall require the  
3 employer or client to provide the alleged perpetrator with notice of the  
4 complaint and the laws prohibiting retaliation in relation to a complaint of  
5 discrimination or sexual harassment.

6 Sec. 4. OUTREACH REGARDING ENHANCED REPORTING

7 MECHANISMS

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

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

15 (2) where to find information regarding:

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

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

1       Sec. 5. REPORT REGARDING ENHANCED REPORTING MECHANISMS

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

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

11          (2) a summary of changes, if any, in the annual number of complaints of  
12          employment and independent contractor discrimination and sexual harassment  
13          received and the number of complaints resulting in an investigation,  
14          settlement, or State court action during calendar years 2018 and 2019 in  
15          comparison to calendar years 2016 and 2017;

16          (3) the number of employees and independent contractors that reported  
17          the employment discrimination or sexual harassment to their employer,  
18          supervisor, or client prior to making a complaint in comparison to the number  
19          that did not, and the reasons that employees and independent contractors gave  
20          for not reporting the discrimination or sexual harassment to their employer,  
21          supervisor, or client prior to making a complaint; and

1           (4) any suggestion for legislative action to enhance further the reporting  
2           mechanisms or to reduce the amount of employment and independent  
3           contractor discrimination and sexual harassment.

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

5           § 495m. SEXUAL HARASSMENT COMPLAINTS FILED IN SUPERIOR  
6                   COURT; NOTICE TO ATTORNEY GENERAL AND HUMAN  
7                   RIGHTS COMMISSION

8           (a) A person that files a claim of sexual harassment pursuant to section  
9           495b of this subchapter in which neither the Attorney General nor the Human  
10           Rights Commission is a party shall provide notice of the action to the Attorney  
11           General and the Human Rights Commission within 14 days after filing the  
12           complaint. The notice may be submitted electronically and shall include a  
13           copy of the filed complaint.

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

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

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

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

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

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

5 Sec. 6. COMMISSIONER OF LABOR; POSTER

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

9 Sec. 7. EFFECTIVE DATE

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