

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing, and Military Affairs to which was
3 referred House Bill No. 707 entitled “An act relating to the prevention of
4 sexual harassment” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

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

8 § 495h. SEXUAL HARASSMENT

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

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

14 * * *

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

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

4 * * *

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

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

14 (3) Employers are encouraged to conduct additional training ~~for current~~
15 ~~supervisory and managerial employees and members within one year of~~
16 ~~September 30, 1993, and~~ for new supervisory and managerial employees and
17 members within one year of after commencement of employment or
18 membership, which should include at a minimum the information outlined in
19 ~~subsection (b) of this section and,~~ the specific responsibilities of supervisory
20 and managerial employees, and the ~~methods~~ actions that these employees must

1 take to ensure immediate and appropriate corrective action in addressing
2 sexual harassment complaints.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i)(1)(A) For the purpose of assessing compliance with the provisions of
2 this section, the Attorney General or designee, or, if the employer is the State,
3 the Human Rights Commission or designee, may, with 48 hours' notice, at
4 reasonable times and without unduly disrupting business operations enter and
5 inspect any place of business or employment, question any person who is
6 authorized by the employer to receive or investigate complaints of sexual
7 harassment, and examine an employer's records, policies, procedures, and
8 training materials related to the prevention of sexual harassment and the
9 requirements of this section. As used in this subsection, the term "records"
10 includes de-identified data regarding the number of complaints of sexual
11 harassment received and the resolution of each complaint.

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

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

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

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

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

15 **§ 495b. PENALTIES AND ENFORCEMENT**

16 **(a)(1) The Attorney General or a State’s Attorney may enforce the**
17 **provisions of this subchapter by restraining prohibited acts, seeking civil**
18 **penalties, obtaining assurances of discontinuance, and conducting civil**
19 **investigations in accordance with the procedures established in 9 V.S.A.**
20 **§§ 2458-2461 as though an unlawful employment practice were an unfair act**
21 **in commerce. Any employer, employment agency, or labor organization**

1 complained against shall have the same rights and remedies as specified
2 therein. The Superior Courts are authorized to impose the same civil penalties
3 and investigation costs and to order other relief to the State of Vermont or an
4 aggrieved employee for violations of this subchapter as they are authorized to
5 impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an
6 unfair act in commerce. In addition, the Superior Courts may order restitution
7 of wages or other benefits on behalf of an employee and may order
8 reinstatement and other appropriate relief on behalf of an employee.

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

14 * * *

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

16 § 4552. DUTIES; JURISDICTION

17 * * *

18 (b)(1) The Commission shall have jurisdiction to investigate and enforce
19 complaints of unlawful discrimination in violation of chapter 139 of this title,
20 discrimination in public accommodations and rental and sale of real estate.
21 The Commission shall also have jurisdiction when the party complained

1 against is a State agency in matters for which the Attorney General would
2 otherwise have jurisdiction under subsection (c) of this section.

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

8 (c) All complaints of unlawful discrimination in violation of 21 V.S.A.
9 §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions
10 for workers' compensation discrimination, respectively, and of 21 V.S.A.
11 § 471 et seq. shall be referred to the Attorney General's office, for
12 investigation and enforcement.

13 **Sec. 4. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;**
14 **ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL**
15 **HARASSMENT**

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

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

8 **Sec. 5. OUTREACH REGARDING ENHANCED REPORTING**
9 **MECHANISMS**

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

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

17 (2) where to find information regarding:

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

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

1 **Sec. 6. 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 work-related
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 work-related discrimination and sexual harassment received
13 and the number of complaints resulting in an investigation, settlement, or State
14 court action during calendar years 2018 and 2019 in comparison to calendar
15 years 2016 and 2017;

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

1 sexual harassment to their employer, supervisor, or the person for whom they
2 were working prior to making a complaint; and

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

6 **Sec. 7.** 21 V.S.A. § 495m is added to read:

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

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

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

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

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

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

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

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

7 **Sec. 8.** COMMISSIONER OF LABOR; POSTER

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

11 **Sec. 9.** EFFECTIVE DATE

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

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15 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE