

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

2 § 495h. SEXUAL HARASSMENT

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

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

8 \* \* \*

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

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

18 \* \* \*

19 (f)(1) Employers and labor organizations are encouraged to conduct an  
20 education and training program ~~within one year after September 30, 1993 for~~  
21 ~~all current employees and members, and for all new employees and members~~

1 ~~thereafter within one year of commencement of employment~~, that includes at a  
2 minimum all the information outlined in this section within one year after  
3 commencement of employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19          (4) Nothing in subdivision (2) of this subsection shall be construed to  
20 prevent an agreement to settle a sexual harassment claim from waiving or  
21 releasing the claimant's right to seek or obtain any remedies relating to sexual

1 harassment of the claimant by another party to the agreement that occurred  
2 before the date on which the agreement is executed.

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

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

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

17 (B) The employer shall at reasonable times and without unduly  
18 disrupting business operations make any persons who are authorized by the  
19 employer to receive or investigate complaints of sexual harassment and any  
20 records, policies, procedures, and training materials related to the prevention of  
21 sexual harassment and the requirements of this section available to the

1 Attorney General or designee or, if the employer is the State, the Human  
2 Rights Commission or designee.

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

17 (3)(A) The Attorney General shall keep records, materials, and  
18 information related to or obtained through an inspection carried out pursuant to  
19 this subsection (i) confidential as provided pursuant to 9 V.S.A. § 2460(a)(4).

20 (B) The Human Rights Commission shall keep records, materials,  
21 and information related to or obtained through an inspection carried out

1 pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A.  
2 § 4555.

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

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

6 § 495b. PENALTIES AND ENFORCEMENT

7 (a)(1) The Attorney General or a State's Attorney may enforce the  
8 provisions of this subchapter by restraining prohibited acts, seeking civil  
9 penalties, obtaining assurances of discontinuance, and conducting civil  
10 investigations in accordance with the procedures established in 9 V.S.A.  
11 §§ 2458-2461 as though an unlawful employment practice were an unfair act  
12 in commerce. Any employer, employment agency, or labor organization  
13 complained against shall have the same rights and remedies as specified  
14 therein. The Superior Courts are authorized to impose the same civil penalties  
15 and investigation costs and to order other relief to the State of Vermont or an  
16 aggrieved employee for violations of this subchapter as they are authorized to  
17 impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an  
18 unfair act in commerce. In addition, the Superior Courts may order restitution  
19 of wages or other benefits on behalf of an employee and may order  
20 reinstatement and other appropriate relief on behalf of an employee.





1 (c) All complaints of unlawful discrimination in violation of 21 V.S.A.  
2 §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions  
3 for workers' compensation discrimination, respectively, and of 21 V.S.A.  
4 § 471 et seq. shall be referred to the Attorney General's office, for  
5 investigation and enforcement.

6 Sec. 4. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;  
7 ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL  
8 HARASSMENT

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

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

1 Sec. 5. PUBLIC EDUCATION AND OUTREACH; VERMONT

2 COMMISSION ON WOMEN

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

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

10 (2) where to find information regarding:

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

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

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

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

21 (c) The program may include:

- 1           (1) public service announcements;
- 2           (2) print and electronic advertisements;
- 3           (3) web-based and electronic training materials;
- 4           (4) printed informational and training materials;
- 5           (5) model educational programs and curricula; and
- 6           (6) in-person seminars and workshops.

7           Sec. 6. REPORT REGARDING ENHANCED REPORTING MECHANISMS

8           On or before January 15, 2020, the Attorney General, in consultation with  
9           the Human Rights Commission and the Vermont Commission on Women,  
10           shall submit to the House Committee on General, Housing, and Military  
11           Affairs and the Senate Committee on Economic Development, Housing and  
12           General Affairs a report regarding the implementation of the enhanced  
13           reporting mechanisms for instances of employment and work-related  
14           discrimination and sexual harassment. The report shall include:

- 15           (1) a detailed description of how any existing reporting mechanisms  
16           were enhanced and any new reporting mechanisms that were implemented;
- 17           (2) a summary of changes, if any, in the annual number of complaints of  
18           employment and work-related discrimination and sexual harassment received  
19           and the number of complaints resulting in an investigation, settlement, or State  
20           court action during calendar years 2018 and 2019 in comparison to calendar  
21           years 2016 and 2017;

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

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

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

12       § 495n. SEXUAL HARASSMENT COMPLAINTS; NOTICE TO

13           ATTORNEY GENERAL AND HUMAN RIGHTS COMMISSION

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

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

1           (A) intervene in the action to seek remedies pursuant to section 495b  
2 of this subchapter; 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           (2) Upon receiving notice of a complaint in which the State is not a  
6 party, the Attorney General may elect to:

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

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

11 Sec. 8. COMMISSIONER OF LABOR; POSTER

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

15 Sec. 9. [Deleted.]

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

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

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

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

11          (b) In particular, the report shall:

12           (1) identify potential mechanism to accomplish the potential changes  
13           described in subdivisions (a)(1) and (2) of this section;

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

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

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

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

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

7        Sec. 11. EFFECTIVE DATES

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

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

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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_  
Senator \_\_\_\_\_  
FOR THE COMMITTEE