

1 TO THE HONORABLE SENATE:

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

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

9 § 495h. SEXUAL HARASSMENT

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

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

15 * * *

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

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 individual
2 who made the claim from doing any 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;

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;

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

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

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

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

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

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

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

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

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

11 (2) Following an inspection and examination pursuant to subdivision (1)
12 of this subsection (i), the Attorney General or the Human Rights Commission
13 shall notify the employer of the results of the inspection and examination,
14 including any issues or deficiencies identified, provide resources regarding
15 practices and procedures for the prevention of sexual harassment that the
16 employer may wish to adopt or utilize, and identify any technical assistance
17 that the Attorney General or the Human Rights Commission may be able to
18 provide to help the employer address any identified issues or deficiencies. If
19 the Attorney General or the Human Rights Commission determines that it is
20 necessary to ensure the employer’s workplace is free from sexual harassment,
21 the employer may be required, for a period of up to three years, to provide an

1 annual education and training program that satisfies the provisions of
2 subsection (f) of this section to all employees or to conduct an annual,
3 anonymous working-climate survey, or both.

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

7 (B) The Human Rights Commission shall keep records, materials,
8 and information related to or obtained through an inspection carried out
9 pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A.
10 § 4555.

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

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

14 § 495b. PENALTIES AND ENFORCEMENT

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

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

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

13 * * *

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

15 § 4552. DUTIES; JURISDICTION

16 * * *

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

20 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. PUBLIC EDUCATION AND OUTREACH; VERMONT
9 COMMISSION ON WOMEN

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

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

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; and

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

3 (b) The sum of \$125,000.00 is appropriated to the Vermont Commission on
4 Women for the purpose of creating and implementing the public education and
5 outreach program.

6 (c) The program may include:

7 (1) public service announcements;

8 (2) print and electronic advertisements;

9 (3) web-based and electronic training materials;

10 (4) printed informational and training materials;

11 (5) model educational programs and curricula; and

12 (6) in-person seminars and workshops.

13 Sec. 6. REPORT REGARDING ENHANCED REPORTING MECHANISMS

14 On or before January 15, 2020, the Attorney General, in consultation with
15 the Human Rights Commission and the Vermont Commission on Women,
16 shall submit to the House Committee on General, Housing, and Military
17 Affairs and the Senate Committee on Economic Development, Housing and
18 General Affairs a report regarding the implementation of the enhanced
19 reporting mechanisms for instances of employment and work-related
20 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 work-related discrimination and sexual harassment received
5 and the number of complaints resulting in an investigation, settlement, or State
6 court action during calendar years 2018 and 2019 in comparison to calendar
7 years 2016 and 2017;
- 8 (3) the number of employees and other persons that reported
9 employment or work-related discrimination or sexual harassment to their
10 employer, supervisor, or the person for whom they were working prior to
11 making a complaint in comparison to the number that did not, and the reasons
12 that employees and other persons gave for not reporting the discrimination or
13 sexual harassment to their employer, supervisor, or the person for whom they
14 were working prior to making a complaint; and
- 15 (4) any suggestion for legislative action to enhance further the reporting
16 mechanisms or to reduce the amount of employment and work-related
17 discrimination and sexual harassment.

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

2 § 495n. SEXUAL HARASSMENT COMPLAINTS; NOTICE TO

3 ATTORNEY GENERAL AND HUMAN RIGHTS COMMISSION

4 (a) A person that files a claim of sexual harassment pursuant to section
5 495b of this subchapter in which neither the Attorney General nor the Human
6 Rights Commission is a party shall provide notice of the action to the Attorney
7 General and the Human Rights Commission within 14 days after filing the
8 complaint. The notice may be submitted electronically and shall include a
9 copy of the filed complaint.

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

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

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

16 (2) Upon receiving notice of a complaint in which the State is not a
17 party, the Attorney General 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 Sec. 8. COMMISSIONER OF LABOR; POSTER

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

5 Sec. 9. 3 V.S.A. § 348 is added to read:

6 § 348. PREVENTION OF SEXUAL HARASSMENT; TRAINING

7 The Secretary of Administration shall include in the terms and conditions of
8 all contracts for services a requirement that the contractor shall:

9 (1) conduct an annual education and training program for all employees
10 performing services pursuant to the contract that addresses, at a minimum, all
11 of the information outlined in 21 V.S.A. § 495h;

12 (2) conduct an additional education and training program for all
13 supervisory and managerial employees who are performing services pursuant
14 to the contract or supervising or managing employees performing services
15 pursuant to the contract that includes, at a minimum, the information outlined
16 in 21 V.S.A. § 495h, the specific responsibilities of the supervisory and
17 managerial employees with respect to the prevention of sexual harassment, and
18 the actions that the employees must take to ensure immediate and appropriate
19 corrective action in addressing sexual harassment complaints; and

1 (3) provide to the Secretary of Administration annual written
2 certification of compliance with the sexual harassment prevention training
3 requirements of this section.

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

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

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

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

20 (b) In particular, the report shall:

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

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

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

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

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

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

16 Sec. 11. EFFECTIVE DATE

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

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE