Introduced by Representatives Long of Newfane, McCoy of Poultney, and Colburn of Burlington

Referred to Committee on

Date:

Subject: Education; employment; housing; judiciary; racial and social equity

Statement of purpose of bill as introduced: This bill proposes to promote racial and social equity in Vermont through multiple provisions relating to education, employment, housing, law enforcement, and judicial practice and procedure.

An act relating to promoting racial and social equity in Vermont

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

*** Education ***

*** Model Curriculum; Hate Speech; Discrimination ***

Sec. 1a. 16 V.S.A. § 914 is added to read:

§ 914. MODEL CURRICULUM; HATE SPEECH; DISCRIMINATION

(a) The Secretary of Education shall develop and maintain a model curriculum for elementary and secondary schools to teach against hate speech and hateful imagery and symbols and to enable students to recognize discrimination. The curriculum shall include best practices for teaching these concepts.
(b) The Secretary shall:

(1) provide training for school personnel on the model curriculum and best practices;

(2) provide teaching materials that are appropriate to the age and learning ability of the students;

(3) provide technical assistance to school districts for the implementation of the curriculum; and

(4) encourage coordination of effort with existing community resources.

(c) Each superintendent shall determine the content, duration, and frequency of training on issues of hate speech, hateful imagery and symbols, and the recognition of discrimination for the supervisory district and member school districts of the supervisory union for which the superintendent is responsible.

*** Duties of the Ethnic and Social Equity Standards Advisory Working Group ***

Sec. 1b. 2019 Acts and Resolves No. 1, Sec. 1 is amended to read:

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(g) Duties of the Working Group.

***

(4) The Working Group shall advise the Secretary of Education on the development of:
(A) model curriculum and best practices for elementary and secondary schools to teach against hate speech and hateful imagery and symbols and to enable students to recognize discrimination; and

(B) a model racial equity policy.

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* * * Racial Equity Policy * * *

Sec. 1c. 16 V.S.A. § 563 is amended to read:

§ 563. POWERS OF SCHOOL BOARDS; FORM OF VOTE

The school board of a school district, in addition to other duties and authority specifically assigned by law:

* * *

(33) Shall develop, adopt, and ensure implementation of a racial equity policy that shall be at least as stringent as the model policy developed by the Secretary of Education. Any school board that fails to adopt a racial equity policy shall be presumed to have adopted the most current model racial equity policy published by the Secretary of Education.

Sec. 1d. MODEL RACIAL EQUITY POLICY

On or before July 1, 2022, the Agency of Education shall publish a model racial equity policy and shall collaborate with the Ethnic and Social Equity Standards Advisory Working Group created under 2019 Acts and Resolves No. 1 in the development of the policy.
Sec. 1e. TASK FORCE ON SCHOOL EXCLUSIONARY POLICIES

(a) Creation. There is created the Task Force on School Exclusionary Policies. The Task Force shall, in conjunction with the Agency of Education, make recommendations to end suspensions and expulsions for all but the most serious student behaviors.

(b) Membership. The Task Force shall be composed of the Secretary of Education and not more than 20 members appointed by the Secretary of Education, who shall be Vermont residents, and shall be:

(1) educators in public schools;

(2) administrators in public schools;

(3) high school students in public schools;

(4) special educators in public schools;

(5) parents of students in public schools; and

(6) members of community groups working in the areas of racial justice and school discipline reform.

(c) Membership diversity. The Secretary shall seek, in making appointments to the Task Force, racial diversity in membership.

(d) Powers and duties. The Task Force shall, in conjunction with the Agency of Education, make recommendations to end suspensions and
expulsions for all but the most serious student behaviors, and shall perform the
following tasks:

(1) review in-school services and availability of these services in various
supervisory unions and regions of the State that are available to support
students who would otherwise face exclusionary discipline;

(2) recommend additional or more uniform in-school services that
should be available to students who would otherwise face exclusionary
discipline;

(3) define the most serious behaviors that, after considering all other
alternatives and supports, should remain eligible for suspension or expulsion;

and

(4) identify best practice procedures that minimize law enforcement
contacts for students facing in-school or exclusionary discipline.

(e) Report. On or before November 30, 2021, the Task Force shall submit
a written report to the House and Senate Committees on Education with its
findings and any recommendations for legislative action.

(f) Meetings.

(1) The Secretary of Education shall call the first meeting of the Task
Force to occur on or before August 1, 2021.

(2) The Task Force shall select a chair from among its members at the
first meeting.
(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall meet not more than six times.

(g) Assistance. The Task Force shall have the administrative, technical, and legal assistance of the Agency of Education.

(h) Compensation and reimbursement. Members of the Task Force shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings of the Task Force.

Sec. 1f. APPROPRIATION

The sum of $15,000.00 is appropriated from the General Funds in fiscal year 2022 to the Agency of Education for per diem and reimbursement of expenses for Task Force members created under Sec. 1e of this act.

*** Employment ***

*** Discrimination; Unlawful Employment Practices ***

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

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition:

* * *
(8) Retaliation prohibited. An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against any employee because the employee:

(A) has opposed any act or practice that is prohibited under this chapter;

(B) has lodged a complaint or has testified, assisted, or participated in any manner with the Attorney General, a State’s Attorney, the Department of Labor, or the Human Rights Commission in an investigation of prohibited acts or practices;

(C) is known by the employer to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of prohibited acts or practices;

(D) has disclosed his or her wages or has inquired about or discussed the wages of other employees; or

(E) is believed by the employer to have acted as described in subdivisions (A) through (D) of this subdivision. [Repealed.]

* * *

(i) An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against an employee because the employee:

(1) opposed any act or practice that is prohibited under this chapter;
(2) lodged a complaint or testified, assisted, or participated in any manner with the Attorney General, a State’s Attorney, the Department of Labor, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency in an investigation of acts or practices that are prohibited by this chapter;

(3) is known by the employer to be about to lodge a complaint or testify, assist, or participate in any manner in an investigation of acts or practices that are prohibited by this chapter;

(4) disclosed his or her wages or inquired about or discussed the wages of other employees; or

(5) is believed by the employer to have acted as described in subdivisions (A) through (D) of this subdivision.

(j)(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 an act or practice that is prohibited by this section; 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 a violation of the provisions of this section.
(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable.

(k)(1) An agreement to settle a claim of a violation of this section 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 claim of a violation of this section 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 regarding a violation of this section committed by any person with the Attorney General, a State’s Attorney, the Department of Labor, 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 a violation of this section conducted by the Attorney General, a State’s Attorney, the Department of Labor, 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 a violation.
of this section 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 claim of a violation of this
section 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 claim of a violation of this section from
waiving or releasing the claimant’s right to seek or obtain any remedies
relating to a violation of this section committed against the claimant by another
party to the agreement that occurred before the date on which the agreement is
executed.

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

§ 495h. SEXUAL HARASSMENT

* * *
(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. [Repealed.]

(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. [Repealed.]

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* * * Housing * * *

* * * Landlord and Tenant; Financial Soundness; Working Group * * *

Sec. 3. ACCESS TO CREDIT; WORKING GROUP; REPORT

(a) There is created a working group to examine options for allowing landlords and housing lenders to accept documentation other than a credit report to demonstrate a borrower’s financial soundness.

(b) The working group shall have the following members:

(1) the Commissioner of Financial Regulation or designee;

(2) the Director of Racial Equity or designee;

(3) one member designated by the Vermont Bankers’ Association;

(4) one member designated by the Association of Vermont Credit Unions;

(5) one member designated by the Vermont Mortgage Bankers’ Association;

(6) one member designated by Vermont Legal Aid; and
(7) one member of the legal community involved in real estate finance.

(c) On or before October 15, 2021, the Department of Financial Regulation shall report its findings and recommendations to the House Committees on Commerce and Economic Development and on General, Housing, and Military Affairs and to the Senate Committees on Economic Development, Housing and General Affairs and on Finance.

* * * Judiciary * * *

* * * Law Enforcement; Criminal Processing; Religious Freedom * * *

Sec. 4. CRIMINAL JUSTICE COUNCIL; REPORT ON MODEL STATEWIDE POLICY REGARDING RELIGIOUS HEADWEAR IN BOOKING PHOTOGRAPHS

(a) On or before November 1, 2021, the Criminal Justice Council, in consultation with the Executive Director of Racial Equity, shall develop a uniform statewide policy regarding the wearing of religious headwear during booking procedures, including booking photographs, and shall report to the Joint Legislative Justice Oversight Committee regarding the development of the policy for all law enforcement agencies. The report shall include:

(1) the process undertaken by the Council, including a list of the community representatives and other stakeholders that were included in the development of the policy, the number of times the stakeholders met, and any
opportunities given for public comment and the participation in and outcome
of that public comment;

(2) the final proposed policy;

(3) the Council’s recommendation for required hours of training on the
policy; and

(4) a proposed timeline for adoption of the policy by all law
enforcement agencies in the State.

(b) On or before December 1, 2021, members of the Joint Legislative
Justice Oversight Committee shall introduce any resulting proposals in the
form of draft legislation for the 2022 legislative session.

Sec. 5. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

(a) The Judicial Nominating Board is created for the nomination of
Supreme Court Justices, Superior judges, magistrates, and the Chair and
members of the Public Utility Commission.

(b) The Board shall consist of nine members who shall be selected as
follows:

(1) The Governor shall appoint two members who are not attorneys at
law.
(2) The Senate shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(3) The House shall elect two of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(4) Attorneys at law admitted to practice before the Supreme Court of Vermont, and residing in the State, shall elect three of their number as members of the Board. The Supreme Court shall regulate the manner of their nomination and election.

(5) The Executive Director of Racial Equity.

(6) The members of the Board shall serve for terms of two years. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. A House vacancy that occurs when the General Assembly is adjourned shall be filled by the Speaker of the House and a Senate vacancy that occurs when the General Assembly is adjourned shall be filled by the Senate Committee on Committees. Members shall serve until their successors are elected or appointed. Members shall serve no more than three consecutive terms in any capacity.

(6)(7) The members shall elect their own chair, who will serve for a term of two years.
* * *

Sec. 6. 4 V.S.A § 602 is amended to read:

§ 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR
OF THE PUBLIC UTILITY COMMISSION

(a)(1) Prior to submitting to the Governor the names of candidates for
Justices of the Supreme Court, Superior Court judges, magistrates, and the
Chair of the Public Utility Commission, the Judicial Nominating Board shall
submit to the Court Administrator a list of all candidates, and he or she shall
disclose to the Board information solely about professional disciplinary action
taken or pending concerning any candidate.

(2) From the list of candidates, the Judicial Nominating Board shall
select by majority vote, provided that a quorum is present, well-qualified
candidates for the position to be filled.

(b) Whenever a vacancy occurs in the office of a Supreme Court Justice, a
Superior Court judge, magistrate, or Chair of the Public Utility Commission, or
when an incumbent does not declare that he or she will be a candidate to
succeed himself or herself, the Board shall submit to the Governor the names
of as many persons as it deems well-qualified to be appointed to the office.

(c)(1) A candidate for judge or Justice shall be a Vermont resident and an
experienced lawyer who has practiced law in Vermont for a minimum of ten
years, with at least five years immediately preceding his or her application.
to the Board of practice in Vermont. The Board may make exceptions to the five-year requirement for absences from practice for reasons including family, military, academic, or medical leave.

(2) A candidate for magistrate shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for at least five years immediately preceding his or her application to the Board.

(3) A candidate for Chair of the Public Utility Commission shall not be required to be an attorney; however if the candidate is admitted to practice law in Vermont, the Judicial Nominating Board shall submit the candidate’s name to the Court Administrator, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning the candidate. If a candidate is not admitted to practice law in Vermont, but practices a profession requiring licensure, certification, or other professional regulation by the State, the Judicial Nominating Board shall submit the candidate’s name to the State professional regulatory entity and that entity shall disclose to the Board any professional disciplinary action taken or pending concerning the candidate.

(d) A candidate shall possess the following attributes:

(1) Integrity. A candidate shall possess a record and reputation for excellent character and integrity.
(2) Legal knowledge and ability. A candidate shall possess a high degree of knowledge of established legal principles and procedures and have demonstrated a high degree of ability to interpret and apply the law to specific factual situations.

(3) Judicial temperament. A candidate shall possess an appropriate judicial temperament.

(4) Impartiality. A candidate shall exhibit an ability to make judicial determinations in a manner free of bias.

(5) Communication capability. A candidate shall possess demonstrated oral and written capacities, with reasonable accommodations, required by the position.

(6) Financial integrity. A candidate shall possess demonstrated financial probity.

(7) Work ethic. A candidate shall demonstrate diligence.

(8) Administrative capabilities. A candidate shall demonstrate management and organizational skills or experience required by the position.

(9) Courtroom experience Legal Experience. For Superior Court, a candidate shall have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure. For the Environmental Division of the Superior Court, a candidate shall have experience in environmental and zoning law.
(10) Diversity of Experience. A candidate shall have a broad range of lived experience, and candidates shall be drawn from diverse backgrounds to represent the interests of ethnic communities and communities of color throughout the State.

(11) Other. A candidate shall possess other attributes the Board deems relevant as identified through its rules.

* * * Effective Dates * * *

Sec. 7. EFFECTIVE DATES

(a) This section and the following sections shall take effect on passage:

(1) Sec. 1b (duties of ethnic and social equity standards advisory working group).

(2) Sec. 1d (model racial equity policy).

(3) Sec. 1e (task force on school exclusionary policies).

(4) Sec. 1f (appropriation for task force on school exclusionary policies).

(5) Sec. 4 (criminal justice council; report; religious headwear).

(6) Sec. 5 (judicial nominating board; inclusion).

(7) Sec. 6 (judicial nominating board; candidates).

(b) The following sections shall take effect on July 1, 2021:

(1) Sec. 2 (discrimination; unlawful employment practices).

(2) Sec. 2a (sexual harassment).
(c) The following sections shall take effect on July 1, 2022:

(1) Sec. 1a (model curriculum; hate speech; discrimination).

(2) Sec. 1c (racial equity policy).