1	H.401
2	Introduced by Representatives Long of Newfane, McCoy of Poultney, and
3	Colburn of Burlington
4	Referred to Committee on
5	Date:
6	Subject: Education; employment; housing; judiciary; racial and social equity
7	Statement of purpose of bill as introduced: This bill proposes to promote racial
8	and social equity in Vermont through multiple provisions relating to education,
9	employment, housing, law enforcement, and judicial practice and procedure.
10	An act relating to promoting racial and social equity in Vermont
10	An act relating to promoting factar and social equity in vermon
11	It is hereby enacted by the General Assembly of the State of Vermont:
12	* * * Education * * *
13	* * * Model Curriculum; Hate Speech; Discrimination * * *
14	Sec. 1a. 16 V.S.A. § 914 is added to read:
15	§ 914. MODEL CURRICULUM; HATE SPEECH; DISCRIMINATION
16	(a) The Secretary of Education shall develop and maintain a model
17	curriculum for elementary and secondary schools to teach against hate speech
18	and hateful imagery and symbols and to enable students to recognize
19	discrimination. The curriculum shall include best practices for teaching these
20	concepts.

1	(b) The Secretary shall:
2	(1) provide training for school personnel on the model curriculum and
3	best practices;
4	(2) provide teaching materials that are appropriate to the age and
5	learning ability of the students;
6	(3) provide technical assistance to school districts for the
7	implementation of the curriculum; and
8	(4) encourage coordination of effort with existing community resources.
9	(c) Each superintendent shall determine the content, duration, and
10	frequency of training on issues of hate speech, hateful imagery and symbols,
11	and the recognition of discrimination for the supervisory district and member
12	school districts of the supervisory union for which the superintendent is
13	responsible.
14	* * * Duties of the Ethnic and Social Equity Standards Advisory
15	Working Group * * *
16	Sec. 1b. 2019 Acts and Resolves No. 1, Sec. 1 is amended to read:
17	* * *
18	(g) Duties of the Working Group.
19	* * *
20	(4) The Working Group shall advise the Secretary of Education on the
21	development of:

1	(A) model curriculum and best practices for elementary and
2	secondary schools to teach against hate speech and hateful imagery and
3	symbols and to enable students to recognize discrimination; and
4	(B) a model racial equity policy.
5	* * *
6	* * * Racial Equity Policy * * *
7	Sec. 1c. 16 V.S.A. § 563 is amended to read:
8	§ 563. POWERS OF SCHOOL BOARDS; FORM OF VOTE
9	The school board of a school district, in addition to other duties and
10	authority specifically assigned by law:
11	* * *
12	(33) Shall develop, adopt, and ensure implementation of a racial equity
13	policy that shall be at least as stringent as the model policy developed by the
14	Secretary of Education. Any school board that fails to adopt a racial equity
15	policy shall be presumed to have adopted the most current model racial equity
16	policy published by the Secretary of Education.
17	Sec. 1d. MODEL RACIAL EQUITY POLICY
18	On or before July 1, 2022, the Agency of Education shall publish a model
19	racial equity policy and shall collaborate with the Ethnic and Social Equity
20	Standards Advisory Working Group created under 2019 Acts and Resolves
21	No. 1 in the development of the policy.

1	* * * Task Force on School Exclusionary Policies * * *
2	Sec. 1e. TASK FORCE ON SCHOOL EXCLUSIONARY POLICIES
3	(a) Creation. There is created the Task Force on School Exclusionary
4	Policies. The Task Force shall, in conjunction with the Agency of Education,
5	make recommendations to end suspensions and expulsions for all but the most
6	serious student behaviors.
7	(b) Membership. The Task Force shall be composed of the Secretary of
8	Education and not more than 20 members appointed by the Secretary of
9	Education, who shall be Vermont residents, and shall be:
10	(1) educators in public schools;
11	(2) administrators in public schools;
12	(3) high school students in public schools;
13	(4) special educators in public schools;
14	(5) parents of students in public schools; and
15	(6) members of community groups working in the areas of racial justice
16	and school discipline reform.
17	(c) Membership diversity. The Secretary shall seek, in making
18	appointments to the Task Force, racial diversity in membership.
19	(d) Powers and duties. The Task Force shall, in conjunction with the
20	Agency of Education, make recommendations to end suspensions and

1	expulsions for all but the most serious student behaviors, and shall perform the
2	following tasks:
3	(1) review in-school services and availability of these services in various
4	supervisory unions and regions of the State that are available to support
5	students who would otherwise face exclusionary discipline;
6	(2) recommend additional or more uniform in-school services that
7	should be available to students who would otherwise face exclusionary
8	discipline;
9	(3) define the most serious behaviors that, after considering all other
10	alternatives and supports, should remain eligible for suspension or expulsion;
11	and
12	(4) identify best practice procedures that minimize law enforcement
13	contacts for students facing in-school or exclusionary discipline.
14	(e) Report. On or before November 30, 2021, the Task Force shall submit
15	a written report to the House and Senate Committees on Education with its
16	findings and any recommendations for legislative action.
17	(f) Meetings.
18	(1) The Secretary of Education shall call the first meeting of the Task
19	Force to occur on or before August 1, 2021.
20	(2) The Task Force shall select a chair from among its members at the
21	first meeting.

1	(3) A majority of the membership shall constitute a quorum.
2	(4) The Task Force shall meet not more than six times.
3	(g) Assistance. The Task Force shall have the administrative, technical,
4	and legal assistance of the Agency of Education.
5	(h) Compensation and reimbursement. Members of the Task Force shall be
6	entitled to per diem compensation and reimbursement of expenses as permitted
7	under 32 V.S.A. § 1010 for not more than six meetings of the Task Force.
8	Sec. 1f. APPROPRIATION
9	The sum of \$15,000.00 is appropriated from the General Funds in fiscal
10	year 2022 to the Agency of Education for per diem and reimbursement of
11	expenses for Task Force members created under Sec. 1e of this act.
12	* * * Employment * * *
13	* * * Discrimination; Unlawful Employment Practices * * *
14	Sec. 2. 21 V.S.A. § 495 is amended to read:
15	§ 495. UNLAWFUL EMPLOYMENT PRACTICE
16	(a) It shall be unlawful employment practice, except where a bona fide
17	occupational qualification requires persons of a particular race, color, religion,
18	national origin, sex, sexual orientation, gender identity, ancestry, place of birth,
19	age, crime victim status, or physical or mental condition:
20	* * *

1	(8) Retaliation prohibited. An employer, employment agency, or labor
2	organization shall not discharge or in any other manner discriminate against
3	any employee because the employee:
4	(A) has opposed any act or practice that is prohibited under this
5	chapter;
6	(B) has lodged a complaint or has testified, assisted, or participated in
7	any manner with the Attorney General, a State's Attorney, the Department of
8	Labor, or the Human Rights Commission in an investigation of prohibited acts
9	or practices;
10	(C) is known by the employer to be about to lodge a complaint,
11	testify, assist, or participate in any manner in an investigation of prohibited
12	acts or practices;
13	(D) has disclosed his or her wages or has inquired about or discussed
14	the wages of other employees; or
15	(E) is believed by the employer to have acted as described in
16	subdivisions (A) through (D) of this subdivision. [Repealed.]
17	* * *
18	(i) An employer, employment agency, or labor organization shall not
19	discharge or in any other manner discriminate against an employee because the
20	employee:
21	(1) opposed any act or practice that is prohibited under this chapter;

1	(2) lodged a complaint or testified, assisted, or participated in any
2	manner with the Attorney General, a State's Attorney, the Department of
3	Labor, the Human Rights Commission, the Equal Employment Opportunity
4	Commission, or any other State or federal agency in an investigation of acts or
5	practices that are prohibited by this chapter;
6	(3) is known by the employer to be about to lodge a complaint or testify,
7	assist, or participate in any manner in an investigation of acts or practices that
8	are prohibited by this chapter;
9	(4) disclosed his or her wages or inquired about or discussed the wages
10	of other employees; or
11	(5) is believed by the employer to have acted as described in
12	subdivisions (A) through (D) of this subdivision.
13	(j)(1) An employer shall not require any employee or prospective
14	employee, as a condition of employment, to sign an agreement or waiver that
15	does either of the following:
16	(A) prohibits, prevents, or otherwise restricts the employee or
17	prospective employee from opposing, disclosing, reporting, or participating in
18	an investigation of an act or practice that is prohibited by this section; or
19	(B) except as otherwise permitted by State or federal law, purports to
20	waive a substantive or procedural right or remedy available to the employee
21	with respect to a claim of a violation of the provisions of this section.

1	(2) Any provision of an agreement that violates subdivision (1) of this
2	subsection shall be void and unenforceable.
3	(k)(1) An agreement to settle a claim of a violation of this section shall not
4	prohibit, prevent, or otherwise restrict the employee from working for the
5	employer or any parent company, subsidiary, division, or affiliate of the
6	employer.
7	(2) An agreement to settle a claim of a violation of this section shall
8	expressly state that:
9	(A) it does not prohibit, prevent, or otherwise restrict the individual
10	who made the claim from doing any of the following:
11	(i) lodging a complaint regarding a violation of this section
12	committed by any person with the Attorney General, a State's Attorney, the
13	Department of Labor, the Human Rights Commission, the Equal Employment
14	Opportunity Commission, or any other State or federal agency;
15	(ii) testifying, assisting, or participating in any manner with an
16	investigation related to a claim of a violation of this section conducted by the
17	Attorney General, a State's Attorney, the Department of Labor, the Human
18	Rights Commission, the Equal Employment Opportunity Commission, or any
19	other State or federal agency;
20	(iii) complying with a valid request for discovery in relation to
21	civil litigation or testifying in a hearing or trial related to a claim of a violation

1	of this section that is conducted by a court, pursuant to an arbitration
2	agreement, or before another appropriate tribunal; or
3	(iv) exercising any right the individual may have pursuant to State
4	or federal labor relations laws to engage in concerted activities with other
5	employees for the purposes of collective bargaining or mutual aid and
6	protection; and
7	(B) it does not waive any rights or claims that may arise after the date
8	the settlement agreement is executed.
9	(3) Any provision of an agreement to settle a claim of a violation of this
10	section that violates subdivision (1) or (2) of this subsection shall be void and
11	unenforceable with respect to the individual who made the claim.
12	(4) Nothing in subdivision (2) of this subsection shall be construed to
13	prevent an agreement to settle a claim of a violation of this section from
14	waiving or releasing the claimant's right to seek or obtain any remedies
15	relating to a violation of this section committed against the claimant by another
16	party to the agreement that occurred before the date on which the agreement is
17	executed.
18	Sec. 2a. 21 V.S.A. § 495h is amended to read:
19	§ 495h. SEXUAL HARASSMENT
20	* * *

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. [Repealed.]
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:
18	(A) it does not prohibit, prevent, or otherwise restrict the individual
19	who made the claim from doing any of the following:
20	(i) lodging a complaint of sexual harassment committed by any
21	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;
3	(ii) 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	(iii) complying with a valid request for discovery in relation to
9	civil litigation or testifying in a hearing or trial related to a claim of sexual
10	harassment that is conducted by a court, pursuant to an arbitration agreement,
11	or before another appropriate tribunal; or
12	(iv) exercising any right the individual may have pursuant to State
13	or federal labor relations laws to engage in concerted activities with other
14	employees for the purposes of collective bargaining or mutual aid and
15	protection; and
16	(B) it does not waive any rights or claims that may arise after the date
17	the settlement agreement is executed.
18	(3) Any provision of an agreement to settle a sexual harassment claim
19	that violates subdivision (1) or (2) of this subsection shall be void and
20	unenforceable with respect to the individual who made the claim.

1	(4) Nothing in subdivision (2) of this subsection shall be construed to
2	prevent an agreement to settle a sexual harassment claim from waiving or
3	releasing the claimant's right to seek or obtain any remedies relating to sexual
4	harassment of the claimant by another party to the agreement that occurred
5	before the date on which the agreement is executed. [Repealed.]
6	* * *
7	* * * Housing * * *
8	* * * Landlord and Tenant; Financial Soundness; Working Group * * *
9	Sec. 3. ACCESS TO CREDIT; WORKING GROUP; REPORT
10	(a) There is created a working group to examine options for allowing
11	landlords and housing lenders to accept documentation other than a credit
12	report to demonstrate a borrower's financial soundness.
13	(b) The working group shall have the following members:
14	(1) the Commissioner of Financial Regulation or designee;
15	(2) the Director of Racial Equity or designee:
16	(3) one member designated by the Vermont Bankers' Association;
17	(4) one member designated by the Association of Vermont Credit
18	Unions;
19	(5) one member designated by the Vermont Mortgage Bankers'
20	Association:
21	(6) one member designated by Vermont Legal Aid; and

1	(7) one member of the legal community involved in real estate finance.
2	(c) On or before October 15, 2021, the Department of Financial Regulation
3	shall report its findings and recommendations to the House Committees on
4	Commerce and Economic Development and on General, Housing, and Military
5	Affairs and to the Senate Committees on Economic Development, Housing and
6	General Affairs and on Finance.
7	* * * Judiciary * * *
8	* * * Law Enforcement; Criminal Processing; Religious Freedom * * *
9	Sec. 4. CRIMINAL JUSTICE COUNCIL; REPORT ON MODEL
10	STATEWIDE POLICY REGARDING RELIGIOUS HEADWEAR IN
11	BOOKING PHOTOGRAPHS
12	(a) On or before November 1, 2021, the Criminal Justice Council, in
13	consultation with the Executive Director of Racial Equity, shall develop a
14	uniform statewide policy regarding the wearing of religious headwear during
15	booking procedures, including booking photographs, and shall report to the
16	Joint Legislative Justice Oversight Committee regarding the development of
17	the policy for all law enforcement agencies. The report shall include:
18	(1) the process undertaken by the Council, including a list of the
19	community representatives and other stakeholders that were included in the
20	development of the policy, the number of times the stakeholders met, and any

1	opportunities given for public comment and the participation in and outcome
2	of that public comment;
3	(2) the final proposed policy;
4	(3) the Council's recommendation for required hours of training on the
5	policy; and
6	(4) a proposed timeline for adoption of the policy by all law
7	enforcement agencies in the State.
8	(b) On or before December 1, 2021, members of the Joint Legislative
9	Justice Oversight Committee shall introduce any resulting proposals in the
10	form of draft legislation for the 2022 legislative session.
11	* * * Judicial Nominating Board; Diversity and Inclusion * * *
12	Sec. 5. 4 V.S.A. § 601 is amended to read:
13	§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION
14	(a) The Judicial Nominating Board is created for the nomination of
15	Supreme Court Justices, Superior judges, magistrates, and the Chair and
16	members of the Public Utility Commission.
17	(b) The Board shall consist of $\frac{11}{11}$ <u>nine</u> members who shall be selected as
18	follows:
19	(1) The Governor shall appoint two members who are not attorneys at
20	law.

1	(2) The Senate shall elect three \underline{two} of its members, not all of whom
2	shall be members of the same party, and only one of whom may be an attorney
3	at law.
4	(3) The House shall elect three \underline{two} of its members, not all of whom
5	shall be members of the same party, and only one of whom may be an attorney
6	at law.
7	(4) Attorneys at law admitted to practice before the Supreme Court of
8	Vermont, and residing in the State, shall elect three two of their number as
9	members of the Board. The Supreme Court shall regulate the manner of their
10	nomination and election.
11	(5) <u>The Executive Director of Racial Equity.</u>
12	(6) The members of the Board shall serve for terms of two years. All
13	appointments or elections shall be between January 1 and February 1 of each
14	odd-numbered year, except to fill a vacancy. A House vacancy that occurs
15	when the General Assembly is adjourned shall be filled by the Speaker of the
16	House and a Senate vacancy that occurs when the General Assembly is
17	adjourned shall be filled by the Senate Committee on Committees. Members
18	shall serve until their successors are elected or appointed. Members shall serve
19	no more than three consecutive terms in any capacity.
20	(6)(7) The members shall elect their own chair, who will serve for a
21	term of two years.

1	* * *
2	Sec. 6. 4 V.S.A § 602 is amended to read:
3	§ 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR
4	OF THE PUBLIC UTILITY COMMISSION
5	(a)(1) Prior to submitting to the Governor the names of candidates for
6	Justices of the Supreme Court, Superior Court judges, magistrates, and the
7	Chair of the Public Utility Commission, the Judicial Nominating Board shall
8	submit to the Court Administrator a list of all candidates, and he or she shall
9	disclose to the Board information solely about professional disciplinary action
10	taken or pending concerning any candidate.
11	(2) From the list of candidates, the Judicial Nominating Board shall
12	select by majority vote, provided that a quorum is present, well-qualified
13	qualified candidates for the position to be filled.
14	(b) Whenever a vacancy occurs in the office of a Supreme Court Justice, a
15	Superior Court judge, magistrate, or Chair of the Public Utility Commission, or
16	when an incumbent does not declare that he or she will be a candidate to
17	succeed himself or herself, the Board shall submit to the Governor the names
18	of as many persons as it deems well qualified to be appointed to the office.
19	(c)(1) A candidate for judge or Justice shall be a Vermont resident and an
20	experienced lawyer who has practiced law in Vermont for a minimum of ten
21	years, with at least five two years immediately preceding his or her application

1	to the Board of practice in Vermont. The Board may make exceptions to the
2	five-year requirement for absences from practice for reasons including family,
3	military, academic, or medical leave.
4	(2) A candidate for magistrate shall be a Vermont resident and an
5	experienced lawyer who has practiced law in Vermont for at least five years
6	immediately preceding his or her application to the Board.
7	(3) A candidate for Chair of the Public Utility Commission shall not be
8	required to be an attorney; however if the candidate is admitted to practice law
9	in Vermont, the Judicial Nominating Board shall submit the candidate's name
10	to the Court Administrator, and he or she shall disclose to the Board
11	information solely about professional disciplinary action taken or pending
12	concerning the candidate. If a candidate is not admitted to practice law in
13	Vermont, but practices a profession requiring licensure, certification, or other
14	professional regulation by the State, the Judicial Nominating Board shall
15	submit the candidate's name to the State professional regulatory entity and that
16	entity shall disclose to the Board any professional disciplinary action taken or
17	pending concerning the candidate.
18	(d) A candidate shall possess the following attributes:
19	(1) Integrity. A candidate shall possess a record and reputation for
20	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.

1	(10) Diversity of Experience. A candidate shall have a broad range of
2	lived experience, and candidates shall be drawn from diverse backgrounds to
3	represent the interests of ethnic communities and communities of color
4	throughout the State.
5	(11) Other. A candidate shall possess other attributes the Board deems
6	relevant as identified through its rules.
7	* * * Effective Dates * * *
8	Sec. 7. EFFECTIVE DATES
9	(a) This section and the following sections shall take effect on passage:
10	(1) Sec. 1b (duties of ethnic and social equity standards advisory
11	working group).
12	(2) Sec. 1d (model racial equity policy).
13	(3) Sec. 1e (task force on school exclusionary policies).
14	(4) Sec. 1f (appropriation for task force on school exclusionary
15	policies).
16	(5) Sec. 4 (criminal justice council; report; religious headwear).
17	(6) Sec. 5 (judicial nominating board; inclusion).
18	(7) Sec. 6 (judicial nominating board; candidates).
19	(b) The following sections shall take effect on July 1, 2021:
20	(1) Sec. 2 (discrimination; unlawful employment practices).
21	(2) Sec. 2a (sexual harassment).

1	(3) Sec. 3 (housing; access to credit; working group).
2	(c) The following sections shall take effect on July 1, 2022:
3	(1) Sec. 1a (model curriculum; hate speech; discrimination).
4	(2) Sec. 1c (racial equity policy).