

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing, and Military Affairs to which was
3 referred House Bill No. 329 entitled “An act relating to amending the
4 prohibitions against discrimination” respectfully reports that it has considered
5 the same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

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

8 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

13 (1) For any employer, employment agency, or labor organization to
14 harass or discriminate against any individual because of race, color, religion,
15 ancestry, national origin, sex, sexual orientation, gender identity, place of birth,
16 crime victim status, or age or against a qualified individual with a disability;

17 * * *

18 (3) For any employment agency to fail or refuse to classify properly or
19 refer for employment or to otherwise harass or discriminate against any
20 individual because of race, color, religion, ancestry, national origin, sex, sexual

1 orientation, gender identity, place of birth, crime victim status, or age or
2 against a qualified individual with a disability;

3 (4) For any labor organization, because of race, color, religion, ancestry,
4 national origin, sex, sexual orientation, gender identity, place of birth, crime
5 victim status, or age to harass or discriminate against any individual or against
6 a qualified individual with a disability or to limit, segregate, or qualify its
7 membership;

8 * * *

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

12 * * *

13 (i) An employee shall not be required to demonstrate the existence of
14 another employee or individual to whom the employee's treatment can be
15 compared in determining whether a violation of the provisions of this section
16 occurred.

17 (j) Notwithstanding any State or federal judicial precedent to the contrary:

18 (1) the provisions of this section shall be construed liberally to
19 accomplish its remedial purposes and any exceptions and exemptions to the
20 provisions of this section shall be construed narrowly in order to maximize the
21 deterrence of discriminatory behavior;

1 (2) harassment and discrimination need not be severe or pervasive to
2 constitute a violation of this section; and

3 (3) behavior that a reasonable employee with the same protected
4 characteristic would consider to be a petty slight or trivial inconvenience shall
5 not constitute unlawful harassment or discrimination pursuant to this section.

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

7 § 495d. DEFINITIONS

8 As used in this subchapter:

9 * * *

10 (13)(A) “Sexual harassment” is a form of sex discrimination and means
11 unwelcome sexual advances, requests for sexual favors, and other verbal or
12 physical, written, auditory, or visual conduct of a sexual nature when:

13 ~~(A)~~(i) submission to that conduct is made either explicitly or
14 implicitly a term or condition of employment;

15 ~~(B)~~(ii) submission to or rejection of such conduct by an individual is
16 used as a component of the basis for employment decisions affecting that
17 individual; or

18 ~~(C)~~(iii) the conduct has the purpose or effect of ~~substantially~~
19 interfering with an individual’s work ~~performance~~ or creating an intimidating,
20 hostile, or offensive work environment.

1 (B) Sexual harassment need not be severe or pervasive in order to be
2 unlawful pursuant to this subchapter.

3 * * *

4 (16) “Harass” means to engage in unwelcome conduct based on an
5 employee’s race, color, religion, national origin, sex, sexual orientation, gender
6 identity, ancestry, place of birth, age, crime victim status, or physical or mental
7 condition that interferes with the employee’s work or creates a work
8 environment that is intimidating, hostile, or offensive. In determining whether
9 conduct constitutes harassment:

10 (A) The determination shall be made on the basis of the record as a
11 whole, according to the totality of the circumstances, and a single incident may
12 constitute unlawful harassment.

13 (B) Incidents that may be harassment shall be considered in the
14 aggregate with varying types of conduct and conduct based on multiple
15 characteristics viewed in totality, rather than in isolation.

16 (C) Conduct may constitute harassment, regardless of whether:

17 (i) the complaining employee is the individual being harassed;

18 (ii) the complaining employee acquiesced or otherwise submitted
19 to or participated in the conduct;

20 (iii) the conduct is also experienced by others outside the
21 protected class involved in the conduct;

1 (iv) the complaining employee was able to continue carrying out
2 the employee’s job duties and responsibilities despite the conduct;

3 (v) the conduct resulted in a physical or psychological injury; or

4 (vi) the conduct occurred outside the workplace.

5 Sec. 3. 9 V.S.A. § 4500 is amended to read:

6 § 4500. LEGISLATIVE INTENT

7 (a) The provisions of this chapter establishing legal standards, duties, and
8 requirements with respect to persons with disabilities in places of public
9 accommodation as defined in this chapter, except those provisions relating to
10 remedies, are intended to implement and to be construed so as to be consistent
11 with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and
12 regulations promulgated under that ~~act~~ Act, and are not intended to impose
13 additional or higher standards, duties, or requirements than that ~~act~~ Act.

14 (b) Subsections 4502(b) and (c) of this title shall not be construed to create
15 or impose on governmental entities additional or higher standards, duties, or
16 requirements than that imposed by Title II of the Americans with Disabilities
17 Act.

18 (c) Notwithstanding any State or federal judicial precedent to the contrary,
19 the provisions of this chapter shall be construed liberally to accomplish its
20 remedial purposes and any exceptions and exemptions to the provisions of this

1 chapter shall be construed narrowly in order to maximize the deterrence of
2 discriminatory behavior.

3 Sec. 4. 9 V.S.A. § 4501 is amended to read:

4 § 4501. DEFINITIONS

5 As used in this chapter:

6 * * *

7 (12) “Harass” means to engage in unwelcome conduct based on a
8 person’s race, color, religion, national origin, sex, sexual orientation, gender
9 identity, ancestry, place of birth, age, crime victim status, or physical or mental
10 condition that detracts from, undermines, or interferes with the person’s terms,
11 conditions, privileges, or protections in the sale or rental of a dwelling or other
12 real estate, or in the provision of services or facilities in connection with the
13 sale or rental of a dwelling or other real estate. Notwithstanding any judicial
14 precedent to the contrary, such conduct need not be severe or pervasive to be
15 unlawful pursuant to the provisions of this chapter. In determining whether
16 conduct constitutes harassment:

17 (A) The determination shall be made on the basis of the record as a
18 whole, according to the totality of the circumstances, and a single incident may
19 constitute unlawful harassment.

1 (B) Incidents that may be harassment shall be considered in the
2 aggregate with varying types of conduct and conduct based on multiple
3 characteristics viewed in totality, rather than in isolation.

4 (C) Conduct may constitute harassment, regardless of whether:

5 (i) the complaining person is the individual being harassed;

6 (ii) the complaining person acquiesced or otherwise submitted to
7 or participated in the conduct;

8 (iii) the conduct is also experienced by others outside the
9 protected class involved in the conduct;

10 (iv) the complaining person was able to enjoy the benefit of
11 applicable terms, conditions, privileges, or protections in the sale or rental of a
12 dwelling or other real estate, or to obtain services or facilities in connection
13 with the sale or rental of a dwelling or other real estate despite the conduct;

14 (v) the conduct resulted in a physical or psychological injury; or

15 (vi) the conduct occurred outside the place of public
16 accommodations or dwelling.

17 Sec. 5. 12 V.S.A. § 525 is added to read:

18 § 525. ACTIONS BASED ON DISCRIMINATION

19 An action under 9 V.S.A. § 4506(a) or 21 V.S.A. § 495b shall be
20 commenced within six years after the cause of action accrues and not after.

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on July 1, 2022.

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5

6 (Committee vote: _____)

7

8

Representative _____

9

FOR THE COMMITTEE