1	H.359
2	Introduced by Representatives Christie of Hartford, Burrows of West Windsor,
3	Cina of Burlington, Cole of Hartford, Farlice-Rubio of Barnet,
4	LaMont of Morristown, and Mulvaney-Stanak of Burlington
5	Referred to Committee on
6	Date:
7	Subject: Labor; commerce and trade; education; employment practices; public
8	accommodations; fair employment; discrimination; harassment
9	Statement of purpose of bill as introduced: This bill proposes to amend the
10	laws prohibiting discrimination in employment and places of public
11	accommodation and prohibiting harassment in schools to provide that
12	harassment need not be severe or pervasive to be unlawful.
13	An act relating to amending the prohibitions against discrimination and
14	harassment
15	It is hereby enacted by the General Assembly of the State of Vermont:
16	Sec. 1. 21 V.S.A. § 495 is amended to read:
17	§ 495. UNLAWFUL EMPLOYMENT PRACTICE
18	(a) It shall be unlawful employment practice, except where a bona fide
19	occupational qualification requires persons of a particular race, color, religion,

1	national origin, sex, sexual orientation, gender identity, ancestry, place of birth,
2	age, crime victim status, or physical or mental condition:
3	(1) For any employer, employment agency, or labor organization to
4	harass or discriminate against any individual because of race, color, religion,
5	ancestry, national origin, sex, sexual orientation, gender identity, place of birth,
6	crime victim status, or age or against a qualified individual with a disability;.
7	* * *
8	(3) For any employment agency to fail or refuse to classify properly or
9	refer for employment or to otherwise harass or discriminate against any
10	individual because of race, color, religion, ancestry, national origin, sex, sexual
11	orientation, gender identity, place of birth, crime victim status, or age or
12	against a qualified individual with a disability;
13	(4) For any labor organization, to limit, segregate, or qualify its
14	membership with respect to 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 to discriminate against any individual or against a
17	qualified individual with a disability or to limit, segregate, or qualify its
18	membership; or physical or mental condition.
19	* * *

<ul> <li>organization shall not discharge or in any other manner discriminate again</li> <li>any employee because the employee:</li> <li>***</li> <li>(i) An employee shall not be required to demonstrate the existence of</li> <li>another employee or individual to whom the employee's treatment can be</li> <li>compared in determining whether a violation of the provisions of this sect</li> </ul>	
<ul> <li>4 ***</li> <li>5 (i) An employee shall not be required to demonstrate the existence of</li> <li>6 another employee or individual to whom the employee's treatment can be</li> </ul>	
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6 <u>another employee or individual to whom the employee's treatment can be</u>	
7 <u>compared in determining whether a violation of the provisions of this sect</u>	
	<u>ion</u>
8 <u>occurred.</u>	
9 (j) Notwithstanding any State or federal judicial precedent to the contr	<u>ary:</u>
10 (1) harassment and discrimination need not be severe or pervasive t	<u>:0</u>
11 <u>constitute a violation of this section; and</u>	
12 (2) behavior that a reasonable employee with the same protected	
13 <u>characteristic would consider to be a petty slight or trivial inconvenience s</u>	<u>shall</u>
14 <u>not constitute unlawful harassment or discrimination pursuant to this section</u>	<u>on.</u>
15 Sec. 2. 21 V.S.A. § 495d is amended to read:	
16 § 495d. DEFINITIONS	
17 As used in this subchapter:	
18 ***	
19 (13)( <u>A</u> ) "Sexual harassment" is a form of sex discrimination and m	eans
20 unwelcome sexual advances, requests for sexual favors, and other verbal	<del>).</del>
21 physical, written, auditory, or visual conduct of a sexual nature when:	

1	(A)(i) submission to that conduct is made either explicitly or
2	implicitly a term or condition of employment;
3	(B)(ii) submission to or rejection of such conduct by an individual is
4	used as a component of the basis for employment decisions affecting that
5	individual; or
6	(C)(iii) the conduct has the purpose or effect of substantially
7	interfering with an individual's work performance or creating an intimidating,
8	hostile, or offensive work environment.
9	(B) Sexual harassment need not be severe or pervasive in order to be
10	unlawful pursuant to this subchapter.
11	* * *
12	(16) "Harass" means to engage in unwelcome conduct based on an
12 13	(16) "Harass" means to engage in unwelcome conduct based on an employee's race, color, religion, national origin, sex, sexual orientation, gender
13	employee's race, color, religion, national origin, sex, sexual orientation, gender
13 14	employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental
13 14 15	employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition that interferes with the employee's work or creates a work
13 14 15 16	employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition that interferes with the employee's work or creates a work environment that is intimidating, hostile, or offensive. In determining whether
13 14 15 16 17	employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition that interferes with the employee's work or creates a work environment that is intimidating, hostile, or offensive. In determining whether conduct constitutes 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 employee is the individual being harassed;
6	(ii) the complaining employee acquiesced or otherwise submitted
7	to 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 employee was able to continue carrying out
11	the employee's job duties and responsibilities despite the conduct;
12	(v) the conduct resulted in a physical or psychological injury; or
13	(vi) the conduct occurred outside the workplace.
14	Sec. 3. 9 V.S.A. § 4501 is amended to read:
15	§ 4501. DEFINITIONS
16	As used in this chapter:
17	* * *
18	(12)(A) "Harass" means to engage in unwelcome conduct that detracts
19	from, undermines, or interferes with a person's:
20	(i) use of a place of public accommodation or any of the
21	accommodations, advantages, facilities, or privileges of a place of public

1	accommodation because of the person's race, creed, color, national origin,
2	marital status, sex, sexual orientation, gender identity, or disability; or
3	(ii) terms, conditions, privileges, or protections in the sale or rental
4	of a dwelling or other real estate, or in the provision of services or facilities in
5	connection with a dwelling or other real estate, because of the person's race,
6	sex, sexual orientation, gender identity, age, marital status, religious creed,
7	color, national origin, or disability, or because the person intends to occupy a
8	dwelling with one or more minor children, or because the person is a recipient
9	of public assistance, or because the person is a victim of abuse, sexual assault,
10	or stalking.
11	(B) Notwithstanding any judicial precedent to the contrary, harassing
12	conduct need not be severe or pervasive to be unlawful pursuant to the
13	provisions of this chapter. In determining whether conduct constitutes
14	unlawful harassment:
15	(i) The determination shall be made on the basis of the record as a
16	whole, according to the totality of the circumstances, and a single incident may
17	constitute unlawful harassment.
18	(ii) Incidents that may be harassment shall be considered in the
19	aggregate with varying types of conduct and conduct based on multiple
20	characteristics viewed in totality, rather than in isolation.

1	(iii) Conduct may constitute unlawful harassment, regardless of
2	whether:
3	(I) the complaining person is the person being harassed;
4	(II) the complaining person acquiesced or otherwise submitted
5	to or participated in the conduct;
6	(III) the conduct is also experienced by others outside the
7	protected class involved in the conduct;
8	(IV) despite the conduct, the complaining person was able to:
9	(aa) use the place of public accommodation or any of the
10	accommodations, advantages, facilities, or privileges the place of public
11	accommodation; or
12	(bb) enjoy the benefit of applicable terms, conditions,
13	privileges, or protections in the sale or rental of the dwelling or other real
14	estate, or to obtain services or facilities in connection with the dwelling or
15	other real estate;
16	(V) the conduct resulted in a physical or psychological injury;
17	or
18	(VI) the conduct occurred outside the place of public
19	accommodation or the dwelling or other real estate.

1	(C) Behavior that a reasonable person with the same protected
2	characteristic would consider to be a petty slight or trivial inconvenience shall
3	not constitute unlawful harassment or discrimination pursuant to this chapter.
4	Sec. 4. 9 V.S.A. § 4503 is amended to read:
5	§ 4503. UNFAIR HOUSING PRACTICES
6	* * *
7	(d)(1) As used in this section, "harass" means to engage in unwelcome
8	conduct that detracts from, undermines, or interferes with the person's terms,
9	conditions, privileges, or protections in the sale or rental of a dwelling or other
10	real estate, or in the provision of services or facilities in connection with a
11	dwelling or other real estate, because of the person's race, sex, sexual
12	orientation, gender identity, age, marital status, religious creed, color, national
13	origin, or disability, or because the person intends to occupy a dwelling with
14	one or more minor children, or because the person is a recipient of public
15	assistance, or because the person is a victim of abuse, sexual assault, or
16	stalking.
17	(2) Notwithstanding any judicial precedent to the contrary, harassing
18	conduct need not be severe or pervasive to be unlawful pursuant to the
19	provisions of this section. In determining whether conduct constitutes
20	unlawful harassment:

1	(A) The determination shall be made on the basis of the record as a
2	whole, according to the totality of the circumstances, and a single incident may
3	constitute unlawful harassment.
4	(B) Incidents that may be harassment shall be considered in the
5	aggregate with varying types of conduct and conduct based on multiple
6	characteristics viewed in totality, rather than in isolation.
7	(C) Conduct may constitute unlawful harassment, regardless of
8	whether:
9	(i) the complaining person is the person being harassed;
10	(ii) the complaining person acquiesced or otherwise submitted to
11	or participated in the conduct;
12	(iii) the conduct is also experienced by others outside the
13	protected class involved in the conduct;
14	(iv) the complaining person was able to enjoy the benefit of
15	applicable terms, conditions, privileges, or protections in the sale or rental of
16	the dwelling or other real estate, or to obtain services or facilities in connection
17	with the dwelling or other real estate, despite the conduct;
18	(v) the conduct resulted in a physical or psychological injury; or
19	(vi) the conduct occurred outside the dwelling or other real estate.
20	(3) behavior that a reasonable person with the same protected
21	characteristic would consider to be a petty slight or trivial inconvenience shall

1	not constitute unlawful harassment or discrimination pursuant to this section.
2	[Repealed.]
3	Sec. 5. 16 V.S.A. § 11 is amended to read:
4	§ 11. CLASSIFICATIONS AND DEFINITIONS
5	(a) As used in this title, unless the context otherwise clearly requires:
6	* * *
7	(26)(A) "Harassment" means an incident or incidents of verbal, written,
8	visual, or physical conduct, including any incident conducted by electronic
9	means, based on or motivated by a student's or a student's family member's
10	actual or perceived race, creed, color, national origin, marital status, sex,
11	sexual orientation, gender identity, or disability that has the purpose or effect
12	of objectively and substantially undermining and detracting from or interfering
13	with a student's educational performance education or access to school
14	resources or creating an objectively intimidating, hostile, or offensive
15	environment.
16	* * *
17	(C) Notwithstanding any judicial precedent to the contrary, the
18	conduct described in this subdivision (a)(26) need not be severe or pervasive to
19	constitute harassment. In determining whether conduct constitutes harassment:

1	(i) The determination shall be made on the basis of the record as a
2	whole, according to the totality of the circumstances, and a single incident may
3	constitute harassment.
4	(ii) Incidents that may be harassment shall be considered in the
5	aggregate with varying types of conduct and conduct based on multiple
6	characteristics viewed in totality, rather than in isolation.
7	(iii) Conduct may constitute unlawful harassment, regardless of
8	whether:
9	(I) the complaining student is the person being harassed;
10	(II) the complaining student acquiesced or otherwise submitted
11	to or participated in the conduct;
12	(III) the conduct is also experienced by others outside the
13	protected class involved in the conduct;
14	(IV) the complaining student was able to continue the student's
15	education or access to school resources in spite of the conduct;
16	(V) the conduct resulted in a physical or psychological injury;
17	<u>or</u>
18	(VI) the conduct occurred outside the complaining student's
19	school.

1	(iv) Behavior that a reasonable person with the same protected
2	characteristic would consider to be a petty slight or trivial inconvenience shall
3	not constitute harassment pursuant to this subdivision (a)(26).
4	* * *
5	Sec. 6. 16 V.S.A. § 570f is amended to read:
6	§ 570f. HARASSMENT; NOTICE AND RESPONSE
7	* * *
8	(c) To prevail in an action alleging unlawful harassment filed pursuant to
9	this section and 9 V.S.A. chapter 139, the plaintiff shall prove both of the
10	following:
11	(1) The that the student was subjected to unwelcome conduct based on
12	the student's or the student's family member's actual or perceived membership
13	in a category protected by law by pursuant to 9 V.S.A. § 4502.
14	(2) The conduct was either:
15	(A) for multiple instances of conduct, so pervasive that when viewed
16	from an objective standard of a similarly situated reasonable person, it
17	substantially and adversely affected the targeted student's equal access to
18	educational opportunities or benefits provided by the educational institution; or
19	(B) for a single instance of conduct, so severe that when viewed from
20	an objective standard of a similarly situated reasonable person, it substantially

- and adversely affected the targeted student's equal access to educational
   opportunities or benefits provided by the educational institution.
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   Sec. 7. EFFECTIVE DATE
- 5 <u>This act shall take effect on July 1, 2023.</u>