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H.359

Introduced by Representatives Christie of Hartford, Burrows of West Windsor,
Cina of Burlington, Cole of Hartford, Farlice-Rubio of Barnet,
LaMont of Morristown, and Mulvaney-Stanak of Burlington

Referred to Committee on

Date:

Subject: Labor; commerce and trade; education; employment practices; public
accommodations; fair employment; discrimination; harassment

Statement of purpose of bill as introduced: This bill proposes to amend the
laws prohibiting discrimination in employment and places of public
accommodation and prohibiting harassment in schools to provide that
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 * * *

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 ~~(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 or

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~~

1 ~~and adversely affected the targeted student's equal access to educational~~
2 ~~opportunities or benefits provided by the educational institution.~~

3 * * *

4 Sec. 7. EFFECTIVE DATE

5 This act shall take effect on July 1, 2023.