

1 S.102

2 Introduced by Senators Ram Hinsdale, Clarkson, Cummings, Gulick,

3 Harrison, Hashim, Lyons, McCormack, Perchlik, Vyhovsky,

4 Watson, White and Wrenner

5 Referred to Committee on Econ. Dev., Housing and General Affairs

6 Date: February 24, 2023

7 Subject: Labor; executive; education; employment practices; fair employment

8 practices; good cause termination of employment; employee speech;

9 collective bargaining; certification procedure

10 Statement of purpose of bill as introduced: This bill proposes to establish a

11 good cause standard for termination of employment, require employers to

12 provide severance pay to terminated employees, and permit employees or

13 representative organizations to bring an enforcement action on behalf of the

14 State for violations of the good cause termination requirement. This bill also

15 proposes to prohibit employers from taking adverse employment actions

16 against an employee in relation to the employee's exercise of free speech

17 rights. This bill also proposes to permit agricultural and domestic workers to

18 collectively bargain and to permit employees to elect a collective bargaining

19 representative through card check elections.

1 An act relating to expanding employment protections and collective
2 bargaining rights

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

4 ~~Sec. 1, 21 V.S.A. § 495a is added to read:~~

5 § 495a. TERMINATION OF EMPLOYMENT; GOOD CAUSE;

6 REQUIREMENTS

7 (a) Definitions. As used in this section:

8 (1) “Casual employee” means an individual who performs work in or
9 around a private home that is irregular, uncertain, or incidental in nature and
10 duration.

11 (2) “Constructive discharge” means the voluntary termination of
12 employment by an employee because of a situation created by an act or
13 omission of the employer that an objective, reasonable individual would find
14 so intolerable that voluntary termination of employment was the only
15 reasonable course of action for the employee.

16 (3) “Egregious misconduct” means deliberate or grossly negligent
17 conduct by an employee that endangers the safety or well-being of the
18 employee, the employee’s coworkers, or other individuals or that causes
19 serious damage to the employer’s or a customer of the employer’s property or
20 business interests. Egregious misconduct includes discrimination against or
21 harassment of coworkers or other individuals.

1 ~~(4) “Electronic monitoring” means the collection of information~~
2 ~~concerning worker activities or communication by any means other than~~
3 ~~direct, in-person observation, including through the use of a computer;~~
4 ~~telephone; wire; radio; camera; or electromagnetic, photoelectronic, or photo-~~
5 ~~optical system.~~

6 (5) “Employee” means an individual who, in consideration of direct or
7 indirect gain or profit, has been employed by an employer for at least 60
8 calendar days. The term “employee” does not include a casual employee.

9 (6) “Employee leasing company” has the same meaning as in section
10 1031 of this title.

11 (7) “Employer” means any person who employs one or more employees
12 in Vermont.

13 (8) “Relator” means a current or former employee or a representative
14 organization who brings a public enforcement action pursuant to subdivision
15 (m)(2) of this section.

16 (9) “Representative organization” means a labor organization, or a
17 mutual benefit corporation or public benefit corporation, as those terms are
18 defined pursuant to 11B V.S.A. § 1.40, that regularly advocates on behalf of
19 employees or assists employees in the enforcement of the provisions of this
20 title, selected by a current or former employee to bring a public enforcement
21 action on the employee’s behalf pursuant to subdivision (m)(2) of this section.

1 ~~(10) "Temporary help company" has the same meaning as in section~~
2 ~~1051 of this title.~~

3 ~~(1) "Terminate" or "termination" means any cessation of employment,~~
4 ~~including constructive discharge, indefinite suspension, layoff, or reduction in~~
5 ~~hours.~~

6 ~~(b) Good cause for termination required.~~

7 ~~(1)(A) An employer shall not terminate an employee without good~~
8 ~~cause. Good cause for termination includes:~~

9 ~~(i) an employee's continued failure to perform job duties or to~~
10 ~~comply with employer policies despite the employer engaging in the steps of~~
11 ~~progressive discipline required pursuant to subdivisions (c)(2)(A)–(D) of this~~
12 ~~section;~~

13 ~~(ii) an employee engaging in egregious misconduct; and~~

14 ~~(iii) legitimate business reasons as set forth in subsection (d) of~~
15 ~~this section.~~

16 ~~(B) Good cause for termination shall only be determined based on an~~
17 ~~employee's on-duty conduct unless there is a demonstrable and material nexus~~
18 ~~between the employee's off-duty conduct and either the employee's job~~
19 ~~performance or the employer's legitimate business interests.~~

20 ~~(2) When determining whether good cause for termination exists in~~
21 ~~relation to an employee's failure to satisfactorily perform job duties or failure~~

1 ~~to comply with employer policies, the following factors shall be considered in~~

2 addition to any other relevant facts:

3 (A) whether the employee knew or should have known of the
4 relevant job duties or employer policy;

5 (B) whether the employer provided relevant and adequate training to
6 the employee;

7 (C) if the employee failed to comply with an employer policy,
8 whether the policy was reasonable and applied consistently;

9 (D) whether the employer undertook a thorough, fair, and objective
10 investigation before determining that the employee failed to satisfactorily
11 perform job duties or violated an employer policy; and

12 (E) whether the employer provided the employee with clear notice of
13 the employee's rights and the employer's obligations pursuant to this section
14 as well as the employer's policies related to progressive discipline and
15 termination.

16 (3) Good cause shall not be required to terminate an individual who has
17 been employed by an employer for fewer than 60 calendar days.

18 (c) Progressive discipline. Except when an employee has engaged in
19 egregious misconduct or a legitimate business reason exists, an employer shall
20 utilize progressive discipline as provided pursuant to this subsection prior to
21 terminating an employee.

1 (1) An employer shall not terminate an employee for failure to
2 satisfactorily perform job duties or for violating an employer policy until the
3 employer has used progressive discipline with the employee.

4 (2) An employer's progressive discipline policy must include at least the
5 following four disciplinary steps prior to termination:

6 (A) Verbal counseling or warning. An employer shall provide an
7 employee with verbal counseling or a verbal warning that makes the employee
8 aware that the employee is either failing to perform job duties or violating an
9 employer policy and provides the employee with notice of how to perform the
10 job duties or comply with the employer's policy.

11 (B) Written warning. If an employee fails to perform job duties or
12 violates a policy after having already received verbal counseling or a verbal
13 warning for failing to perform those job duties or violating that policy in the
14 past 12 months, the employer may provide the employee with a written
15 warning that identifies the job duties that the employee failed to perform or the
16 policy that the employee violated and provides notice of how to perform the
17 job duties or comply with the policy.

18 (C) Written reprimand. If an employee fails to perform job duties or
19 violates a policy after having already received a written warning for failing to
20 perform those job duties or violating that policy in the past 12 months, the
21 employer may provide the employee with a written reprimand that identifies

1 ~~the job duties that the employee failed to perform or the policy that the~~
2 ~~employee violated and provides notice of how to perform the job duties or~~
3 ~~comply with the policy. A written reprimand shall include notice that~~
4 ~~continued failure to perform the job duties or to comply with the policy may~~
5 ~~result in suspension without pay and termination.~~

6 (D) Suspension without pay. If an employee fails to perform job
7 duties or fails to comply with an employer policy after having already received
8 a written reprimand for failing to perform those job duties or violating that
9 policy in the past 12 months, the employer may suspend the employee without
10 pay for a period of not more than 15 work days based on the severity of the
11 violation. At the time the employee is suspended, the employer shall notify
12 the employee that a further failure to perform the job duties or to comply with
13 the policy may result in termination.

14 (E) Termination. If an employee fails to perform job duties or fails
15 to comply with an employer policy after being suspended without pay for
16 failing to perform those job duties or violating that policy in the past 12
17 months, the employer may terminate the employee. At the time the employee
18 is terminated, the employer shall provide the employee with a written
19 explanation setting forth the specific reasons why the employment was
20 terminated.

1 ~~(3) An employer shall not terminate an employee for failing to perform~~
2 ~~job duties or to follow an employer policy less than 25 days after giving the~~
3 ~~employee verbal counseling or a verbal warning for failing to perform those~~
4 ~~job duties or to follow the employer policy.~~

5 (4) Nothing in this subsection shall be construed to prevent an employer
6 from establishing a progressive discipline process that provides an employee
7 with greater notice or rights than are required pursuant to this subsection.

8 (5) An employer may terminate an employee immediately for egregious
9 misconduct or may utilize some or all of the progressive discipline steps set
10 forth in subdivision (2) of this subsection. An employer that utilizes
11 progressive discipline in relation to an instance of egregious misconduct shall
12 not be required to continue progressive discipline prior to terminating an
13 employee if the employee engages in further egregious misconduct.

14 (d) Termination for legitimate business reasons.

15 (1) An employee shall not be terminated for legitimate business reasons
16 unless all of the following are satisfied:

17 (A) The termination is caused by a reduction in the employer's
18 production, sales, services, profit, or funding, or a technological or
19 organization change to the employer's operation that requires a full or partial
20 reduction of the employer's operation.

1 ~~(B) The employees or groups of employees to be terminated are~~
2 ~~identified using broadly applicable criteria that do not target or appear to target~~
3 ~~individual employees.~~

4 ~~(C) The legitimate business reason for the employee's termination is~~
5 ~~provided to the employee in writing at the time of the employee's termination~~
6 ~~and is supported by records retained by the employer pursuant to subsection (1)~~
7 ~~of this section.~~

8 ~~(2)(A) A termination shall be presumed to not be based on legitimate~~
9 ~~business reasons if the employer hires another employee to perform~~
10 ~~substantially the same work as the employee who is terminated within 90 days~~
11 ~~before or after the termination date.~~

12 ~~(B) Elimination of staff redundancy caused by a merger or~~
13 ~~acquisition shall not be a legitimate business reason for termination.~~

14 ~~(e) Notice of reasons for termination. Within not more than three days~~
15 ~~after an employee is terminated, the employer shall provide the employee with~~
16 ~~a written explanation of the specific reason for the employee's termination.~~
17 ~~The explanation shall notify the employee that the employee is entitled to~~
18 ~~review all information and determinations that the employer considered in~~
19 ~~making the determination to terminate the employee and shall provide~~
20 ~~information regarding how the employee may access and review the~~
21 ~~information and determinations.~~

1 ~~(f) Employee actions that are not good cause for termination. The~~
2 ~~following shall not constitute good cause to terminate an employee:~~

3 ~~(1) communications by the employee to any person regarding working~~
4 ~~conditions or workplace policies and practices; or~~

5 ~~(2) the employee's refusal to work under conditions that the employee~~
6 ~~reasonably believes would expose the employee or another person to an~~
7 ~~unreasonable health or safety risk.~~

8 ~~(g) Use of electronic monitoring restricted.~~

9 ~~(1) An employer shall not terminate an employee based solely on~~
10 ~~information gathered through electronic monitoring.~~

11 ~~(2) An employer may consider information gathered through electronic~~
12 ~~monitoring when determining whether to terminate an employee if the~~
13 ~~information is corroborated by human oversight of the employee, including~~
14 ~~supervisory or managerial observations and documentation of the employee's~~
15 ~~work, personnel records, and consultations with the employee's coworkers.~~

16 ~~(3)(A) An employer shall provide each affected employee with~~
17 ~~reasonable notice of electronic monitoring that may gather information that~~
18 ~~could be used in relation to the termination of the employee.~~

19 ~~(B) Reasonable notice shall, at a minimum, describe:~~

20 ~~(1) the means of electronic monitoring,~~

1 ~~(ii) the purposes for which information gathered through the~~
2 electronic monitoring may be used; and

3 (iii) how the employee may review the information gathered
4 through the electronic monitoring and may challenge its accuracy.

5 (C) Prior notice of electronic monitoring shall not be required if:

6 (i) the employer has reasonable grounds to believe that the
7 employee is engaged in conduct that:

8 (I) is illegal;

9 (II) violates the legal rights of the employer or another
10 employee; or

11 (III) creates a hostile work environment; and

12 (ii) the electronic monitoring is reasonably likely to produce
13 evidence of the conduct.

14 (h) Severance pay required.

15 (1) Upon terminating an employee, an employer shall, in addition to
16 complying with the requirements of section 342 of this title, be required to pay
17 the employee for the employee's unused, accrued paid leave plus severance
18 pay calculated pursuant to the provisions of subdivision (2) of this subsection.

19 (2) An employee shall accrue one hour of severance pay for every 12
20 and one-half hours worked during the employee's first year of employment

1 ~~and one hour for every 50 hours worked in subsequent years. Severance pay~~

2 shall be compensated at a rate that is equal to the greater of either:

3 (A) the normal hourly wage rate of the employee at the time of
4 termination, or

5 (B) the minimum wage rate for an employee pursuant to section 384
6 of this title.

7 (3) Nothing in this subsection shall be construed to diminish an
8 employer's obligation to comply with any collective bargaining agreement,
9 employment contract, or policy that provides greater severance pay or other
10 compensation to employees upon termination than is provided pursuant to this
11 subsection.

12 (i) Employee leasing companies and temporary help companies.

13 (1) When an employee is employed by an employee leasing company or
14 a temporary help company to perform work for a third-party employer, both
15 the employee leasing company or temporary help company and the third-party
16 employer shall be deemed to be the employer of the employee for purposes of
17 this section.

18 (2) Both the employee leasing company or temporary help company and
19 the third-party employer shall be required to comply with the provisions of this
20 section and shall be jointly and severally liable for any violation of the
21 provisions of this section.

1 ~~(j) Retaliation prohibited. An employer shall not retaliate in any manner~~
2 ~~against an employee who exercises or attempts to exercise the rights provided~~
3 ~~by this section.~~

4 ~~(1) The provisions of subdivision 495(a)(8) of this subchapter shall~~
5 ~~apply to this section.~~

6 ~~(2)(A) An employer shall not in any manner prevent or attempt to~~
7 ~~prevent a former employee from obtaining employment with another~~
8 ~~employer.~~

9 ~~(B) Nothing in subdivision (A) of this subdivision (j)(2) shall be~~
10 ~~construed to prevent an employer from providing a person to whom a former~~
11 ~~employee has applied for employment with a truthful statement of the reason~~
12 ~~the former employee was terminated.~~

13 ~~(k) Notice.~~

14 ~~(1) An employer shall provide to all employees within 30 days after~~
15 ~~beginning employment and shall post and maintain in a conspicuous place in~~
16 ~~each of its places of business a notice of the provisions of this section on a~~
17 ~~form provided by the Commissioner of Labor.~~

18 ~~(2) Notice shall be provided to each employee in the employee's~~
19 ~~primary language. The Commissioner of Labor shall translate the notice~~
20 ~~created pursuant to subdivision (1) of this subsection into the five most~~
21 ~~commonly spoken languages in Vermont after English.~~

1 ~~(l) Record keeping.~~

2 ~~(1) Employers shall retain all records documenting compliance with the~~
3 ~~provisions of this section for three years following each termination of~~
4 ~~employment. An employer shall make the records available for inspection by~~
5 ~~the Attorney General upon request.~~

6 ~~(2) An employer's failure to maintain, retain, or produce a record as~~
7 ~~required by this subsection that is relevant to a material fact alleged by an~~
8 ~~employee in a complaint brought pursuant to section 495b of this subchapter~~
9 ~~shall create a rebuttable presumption that the alleged fact is true.~~

10 ~~(m) Enforcement.~~

11 ~~(1) Enforcement by Attorney General or private right of action. The~~
12 ~~penalty and enforcement provision of section 495b of this subchapter shall~~
13 ~~apply to this section. In addition to any penalties and other amounts that may~~
14 ~~be recovered pursuant to section 495b of this title, a court may impose an~~
15 ~~additional civil penalty of not more than \$5,000.00 for each violation of this~~
16 ~~section, which shall be deposited into the Wrongful Termination Enforcement~~
17 ~~Fund created pursuant to subsection (o) of this section.~~

18 ~~(2) Public enforcement.~~

19 ~~(A)(i) In addition to the enforcement provisions of section 495b of~~
20 ~~this title, a relator may bring a public enforcement action seeking penalties and~~

1 ~~relief on behalf of the Attorney General pursuant to subdivision (1) of this~~
2 ~~subsection (m).~~

3 ~~(ii) A court shall be permitted to assess the same penalties and~~
4 ~~grant the same relief in a public enforcement action as in an action brought by~~
5 ~~the Attorney General pursuant to subdivision (1) of this subsection (m).~~

6 ~~(iii) Civil penalties assessed pursuant to a public enforcement~~
7 ~~action shall be distributed as follows:~~

8 ~~(I) if the Attorney General does not intervene in the action, 60~~
9 ~~percent to the Attorney General and 40 percent to the relator to be distributed~~
10 ~~to the employees affected by the violations; or~~

11 ~~(II) if the Attorney General intervenes in the action, 70 percent~~
12 ~~to the Attorney General and 30 percent to the relator to be distributed to the~~
13 ~~employees affected by the violations.~~

14 ~~(B)(i) A relator may bring a public enforcement action on behalf of~~
15 ~~one or more current employees in relation to one or more violations of the~~
16 ~~provisions of this section. A public enforcement action shall not be subject to~~
17 ~~the requirements of Rule 23(a) of the Vermont Rules of Civil Procedure.~~

18 ~~(ii)(I) Before commencing a public enforcement action, a relator~~
19 ~~shall submit to the Attorney General a notice of the claim.~~

1 ~~(II) The Attorney General shall, not later than 60 days after the~~
2 notice of the claim is submitted, review the claim and provide the relator with
3 notice of whether the Attorney General intends to investigate the claim.

4 (III) If the Attorney General decides not to investigate the
5 claim or fails to notify the relator within 60 days, the relator may commence a
6 public enforcement action in relation to the claim.

7 (IV) If the Attorney General decides to investigate the claim,
8 the Attorney General shall complete the investigation within not more than
9 120 calendar days. At the conclusion of the investigation, the Attorney
10 General shall notify the relator of whether or not the Attorney General intends
11 to seek remedies related to the claim pursuant to subdivision (1) of this
12 subsection (m).

13 (V) The relator may commence a public enforcement action if
14 the Attorney General determines not to seek remedies related to the claim or
15 fails to notify the relator of the outcome of the investigation within the time
16 period set forth in subdivision (IV) of this subdivision (m)(2)(B)(ii).

17 (C)(i) A relator shall not bring a public enforcement action if the
18 Attorney General, based on the same facts alleged by the relator, is pursuing or
19 has pursued remedies pursuant to subdivision (1) of this subsection (m) or has
20 notified the relator that it intends to pursue such remedies.

1 ~~(ii) A public enforcement action shall not be permitted in relation~~
2 ~~to an alleged violation of requirements related to posting or providing notice of~~
3 ~~the provisions of this section.~~

4 ~~(D)(i) The Attorney General may intervene in any public~~
5 ~~enforcement action:~~

6 ~~(I) by right within 30 days after the action is filed; or~~

7 ~~(II) more than 30 days after the action is filed in the Superior~~
8 ~~Court for good cause shown as determined by the court.~~

9 ~~(ii)(I) If the Attorney General intervenes in a public enforcement~~
10 ~~action, the Attorney General shall have primary responsibility for prosecuting~~
11 ~~the action and shall not be bound by the actions of the relator.~~

12 ~~(II) A relator shall remain a party to any action that the~~
13 ~~Attorney General elects to intervene in.~~

14 ~~(III)(aa) If, after intervening, the Attorney General wishes to~~
15 ~~dismiss or settle the action, the Attorney General shall ensure that the relator is~~
16 ~~given notice of the motion to dismiss or settle and the proposed settlement, if~~
17 ~~any.~~

18 ~~(bb) The court shall not grant the Attorney General's~~
19 ~~motion to dismiss or approve a proposed settlement until the relator has been~~
20 ~~afforded an opportunity to be heard on the motion or proposed settlement and~~
21 ~~the court has determined that either granting the motion would be fair and in~~

1 ~~the public interest or that the proposed settlement is fair, adequate, reasonable,~~
2 and in the public interest.

3 (n) Reporting.

4 (1) An employer shall, on or before February 15 of each year, submit to
5 the Attorney General an anonymized summary of the total number of
6 employees terminated by the employer and the reasons for those terminations.

7 (2) The summaries submitted pursuant to this subsection shall be
8 maintained by the Attorney General in a public database that is accessible
9 through the website for the Office of the Attorney General and is searchable by
10 employer, county, and year.

11 (o) Wrongful Termination Enforcement Fund. The Wrongful Termination
12 Enforcement Fund is established pursuant to 32 V.S.A. chapter 7, subchapter
13 5. Civil fines collected in the enforcement of this section shall be deposited
14 into the Treasury and credited to this Fund, except that necessary costs
15 incurred for the administration of the Fund shall be withheld and credited to
16 the General Fund. The Office of the Attorney General shall use the monies in
17 the Fund for the costs of enforcing the provisions of this section.

18 (p) Exception; collective bargaining agreements. The provisions of this
19 section shall not apply to employees who are covered by a valid collective
20 bargaining agreement unless the terms of the agreement expressly provide that
21 the provisions of this section shall apply to the covered employees.

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

2 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

7 * * *

8 (7) For any employer, employment agency, labor organization, or
9 person seeking employees to discriminate between employees on the basis of
10 sex by paying wages to employees of one sex at a rate less than the rate paid to
11 employees of the other sex for equal work that requires equal skill, effort, and
12 responsibility and is performed under similar working conditions. An
13 employer who is paying wages in violation of this section shall not reduce the
14 wage rate of any other employee in order to comply with this subsection.

15 * * *

16 (B)(i) No employer ~~may~~ shall do any of the following:

17 (I) Require, as a condition of employment, that an employee
18 refrain from disclosing the amount of ~~his or her~~ the employee's wages or from
19 inquiring about or discussing the wages of other employees.

20 (II) Require an employee to sign a waiver or other document
21 ~~that purports to deny the employee the right to disclose the amount of his or~~

1 ~~her the employee's wages or to inquire about or discuss the wages of other~~
2 employees.

3 * * *

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

7 * * *

8 (D) has disclosed ~~his or her~~ the employee's wages or has inquired
9 about or discussed the wages of other employees; or

10 * * *

11 (b) The provisions of this section shall not be construed to ~~limit~~ alter the
12 rights of employers to discharge employees for good cause shown pursuant to
13 the provisions of section 495o of this subchapter.

14 * * *

15 (h) Nothing in this section shall require an employer to disclose the wages
16 of an employee in response to an inquiry by another employee, unless the
17 failure to do so would otherwise constitute unlawful employment
18 discrimination. Unless otherwise required by law, nothing in this section shall
19 require an employee to disclose ~~his or her~~ the employee's own wages in
20 ~~response to an inquiry by another employee.~~

1 ~~Sec. 3, 21 V.S.A. § 495p is added to read:~~

2 § 495p. EMPLOYEES' EXERCISE OF CONSTITUTIONAL RIGHTS

3 (a) Except as otherwise provided in subsections (b) and (c) of this section,
4 an employer shall not discriminate against, discipline, discharge, or threaten to
5 discipline or discharge an employee for any of the following reasons:

6 (1) the employee's exercise of a right guaranteed by the First
7 Amendment of the U.S. Constitution or Chapter I, Article 3, 13, or 20 of the
8 Vermont Constitution, provided that the employee's exercise of that right does
9 not substantially or materially interfere with the employee's job performance
10 or the working relationship between the employee and the employer;

11 (2) the employee's refusal to attend an employer-sponsored meeting that
12 has the primary purpose of communicating the employer's opinion regarding a
13 religious matter or a political matter, regardless of whether the meeting is with
14 the employer or an agent, representative, or designee of the employer; or

15 (3) the employee's refusal to listen to speech or view communications
16 whose primary purpose is to communicate the employer's opinion concerning
17 a religious matter or a political matter.

18 (b) Nothing in this section shall be construed to prohibit:

19 (1) an employer or the employer's agent from communicating
20 information to an employee.

1 ~~(A) that the employer is required to communicate pursuant to State~~
2 ~~or Federal law; or~~

3 ~~(B) that is necessary for the employee to perform the employee's job~~
4 ~~functions or duties;~~

5 ~~(2) an institution of higher education or an agent of an institution of~~
6 ~~higher education from communicating with an employee regarding an~~
7 ~~academic program, symposium, or course at the institution; or~~

8 ~~(3) casual conversations between employees or between an employee~~
9 ~~and the employer or the employer's agent, provided that the employee is not~~
10 ~~required to participate in the conversation.~~

11 ~~(c) Nothing in this section shall be construed to prohibit an employer that~~
12 ~~is a religious or denominational institution or organization, or any organization~~
13 ~~operated for charitable or educational purposes, that is operated, supervised, or~~
14 ~~controlled by or in connection with a religious organization, from~~
15 ~~communicating with its employees regarding the employer's opinion on~~
16 ~~religious matters or from requiring the employees to listen to or view~~
17 ~~communications from the employer or the employer's agent regarding the~~
18 ~~employer's opinion on religious matters.~~

19 ~~(d)(1) The penalty and enforcement provisions of section 495b of this~~
20 ~~subchapter shall apply to this section.~~

1 ~~(2) The provisions against retaliation in subdivision 405(a)(8) of this~~
2 ~~subchapter shall apply to this section.~~

3 ~~(e) As used in this section:~~

4 ~~(1) "Political matters" means matters relating to elections for political~~
5 ~~office; political parties; legislative proposals; proposals to change rules or~~
6 ~~regulations; and the decision to join or support any political party or political,~~
7 ~~civic, community, fraternal, or labor organization.~~

8 ~~(2) "Religious matters" means matters relating to religious affiliation~~
9 ~~and practice and the decision to join or support any religious or~~
10 ~~denominational organization or institution.~~

11 Sec. 4. 21 V.S.A. § 1502 is amended to read:

12 § 1502. DEFINITIONS

13 As used in this chapter:

14 * * *

15 (6) "Employee" includes any employee, and is not limited to the
16 employees of a particular employer unless this chapter explicitly states
17 otherwise, and includes any individual whose work has ceased as a
18 consequence of, or in connection with, any current labor dispute or because of
19 any unfair labor practice and who has not obtained any other regular and
20 substantially equivalent employment, but does not include an individual;

21 ~~(A) employed as an agricultural laborer,~~

1 ~~(B) employed by his or her the individual's parent or spouse;~~

2 ~~(C) employed in the domestic service of any family or person at his~~
3 ~~or her home;~~

4 ~~(E)(B) having the status of an independent contractor;~~

5 ~~(E)(C) employed as a supervisor;~~

6 ~~(F)(D) employed by an employer subject to the Railway Labor Act as~~
7 ~~amended from time to time; or~~

8 ~~(G)(E) employed by any other person who is not an employer as~~
9 ~~defined in subdivision (7) of this section.~~

10 * * *

11 Sec. 5. 3 V.S.A. § 941 is amended to read:

12 § 941. UNIT DETERMINATION, CERTIFICATION, AND

13 REPRESENTATION

14 * * *

15 (e)(1) Whenever, on the basis of a petition pursuant to subdivision (d)(1) of
16 this section or a hearing pursuant to subdivision (d)(2) of this section, the
17 Board finds substantial interest among employees in forming a bargaining unit
18 or being represented for purposes of collective bargaining, a secret ballot
19 election shall be conducted by the Board not more than 23 business days after
20 the petition is filed with the Board except as otherwise provided pursuant to
21 ~~subdivision (4) of this subsection and subdivision (g)(4) of this section.~~

1 * * *

2 (g)(1) In determining the representation of State employees in a collective
3 bargaining unit, the Board shall conduct a secret ballot of the employees
4 within the time period set forth in subdivision (e)(1) of this section, unless the
5 time to conduct the election is extended pursuant to subdivision (e)(4) of this
6 section, and certify the results to the interested parties and to the State
7 employer. The original ballot shall be so prepared as to permit a vote against
8 representation by anyone named on the ballot. No representative will be
9 certified with less than a majority of the votes cast by employees in the
10 bargaining unit.

11 * * *

12 (4)(A) Notwithstanding any other provision of this subsection (g), if the
13 Board determines that a petition to be represented for collective bargaining
14 filed pursuant to subsection (c) of this section, which identifies a proposed
15 exclusive representative of the employees in the bargaining unit, bears the
16 signatures of at least 50 percent plus one of the employees in a bargaining unit
17 deemed appropriate by the Board pursuant to this section, the Board shall
18 certify the person or labor organization as the exclusive representative of the
19 bargaining unit.

20 (B) Certification of a collective bargaining representative shall only
21 be available pursuant to this subdivision (g)(4) when no other person or labor

1 ~~organization is currently certified or recognized as the exclusive representative~~
2 ~~of the employees in the bargaining unit.~~

3 (h) A representative chosen by secret ballot for the purposes of collective
4 bargaining by a majority of the votes cast by secret ballot or certified pursuant
5 to subdivision (g)(4) of this section shall be the exclusive representative of all
6 the employees in such the bargaining unit for a minimum of one year. Such
7 The representative shall be eligible for reelection or for recertification pursuant
8 to subdivision (g)(4) of this section.

9 * * *

10 Sec. 6. 16 V.S.A. § 1992 is amended to read:

11 § 1992. REFERENDUM PROCEDURE FOR REPRESENTATION

12 (a)(1) An organization purporting to represent a majority of all of the
13 teachers or administrators employed by the school board may be recognized by
14 the school board without the necessity of a referendum upon the submission of
15 a petition bearing the valid signatures of a majority of the teachers or
16 administrators employed by that school board. ~~Within 15 calendar days after~~
17 ~~receiving the petition, the school board shall notify the teachers or~~
18 ~~administrators of the school district in writing of its intention to either require~~
19 ~~or waive a secret ballot referendum. If the school board gives notice of its~~
20 ~~intention to waive a referendum and recognize an organization, 10 percent of~~
21 ~~the teachers or administrators employed by the school board may submit a~~

1 ~~petition within 15 calendar days thereafter, objecting to the granting of~~
2 ~~recognition without a referendum, in which event a secret ballot referendum~~
3 ~~shall be held in the district for the purpose of choosing an exclusive~~
4 ~~representative as provided pursuant to the provisions of this section. The~~
5 ~~school board and the organization purporting to represent a majority of the~~
6 ~~teachers or administrators shall, within 10 business days after the petition is~~
7 ~~submitted, agree on an impartial third party to examine the petition and~~
8 ~~determine whether a majority of the teachers or administrators support the~~
9 ~~organization. If the parties fail to agree on an impartial third party within~~
10 ~~10 business days, the Vermont Labor Relations Board shall examine the~~
11 ~~petition and determine whether a majority of the teachers or administrators~~
12 ~~support the organization. If the impartial party or the Board determines that a~~
13 ~~majority of the teachers or administrators support the organization, it shall~~
14 ~~certify the organization as the exclusive representative of the teachers or~~
15 ~~administrators.~~

16 * * *

17 (b) ~~Recognition granted to~~ Certification of a negotiating unit as exclusive
18 representative shall be valid and not subject to challenge by referendum
19 petition or otherwise for the remainder of the fiscal year in which ~~recognition~~
20 ~~is granted~~ the certification occurs and for an additional period of 12 months

1 ~~after final adoption of the budget for the succeeding fiscal year and shall~~

2 continue thereafter until a new referendum is called for.

3 (c)(1)(A) A secret ballot referendum shall be held not more than 21
4 calendar days after 20 percent of the teachers or administrators employed by
5 the school board present a petition requesting a referendum on the matter of
6 representation, except during a period of prior ~~recognition~~ certification, as
7 provided pursuant to subsection (b) of this section.

8 * * *

9 Sec. 7. 21 V.S.A. § 1581 is amended to read:

10 § 1581. PETITIONS FOR ELECTION; FILING, INVESTIGATIONS,
11 HEARINGS, DETERMINATIONS

12 * * *

13 (b)(1) The Board shall investigate the petition and if it has reasonable
14 cause to believe that a question of representation exists shall provide for an
15 appropriate hearing before the Board itself, a Board member thereof, or its
16 agents appointed for that purpose upon due notice. Written notice of the
17 hearing shall be mailed by certified mail to the parties named in the petition
18 not less than seven days before the hearing.

19 (2) If the Board finds upon the record of the hearing that a question of
20 representation exists, it shall conduct an election by secret ballot marked at the

1 ~~place of election and certify to the parties, in writing, the results thereof of the~~
2 ~~election.~~

3 ~~(A) If the Board finds upon the record of the hearing that a petition~~
4 ~~to be represented for collective bargaining filed pursuant to subdivision~~
5 ~~(a)(1)(A) of this section, which identifies a proposed bargaining representative,~~
6 ~~bears the signatures of at least 50 percent plus one of the employees in the~~
7 ~~bargaining unit, the Board shall certify the individual or labor organization~~
8 ~~identified as the bargaining representative.~~

9 ~~(B) Certification of a representative shall only be available pursuant~~
10 ~~to this subdivision (B) when no other individual or labor organization is~~
11 ~~currently certified or recognized as the bargaining representative.~~

12 ~~(c) In determining whether or not a question of representation exists, the~~
13 ~~Board shall apply the same regulations and rules of decision regardless of the~~
14 ~~identity of the persons filing the petition or the kind of relief sought.~~

15 * * *

16 Sec. 8. 21 V.S.A. § 1584 is amended to read:

17 § 1584. PETITIONS AND ELECTION TO RESCIND

18 REPRESENTATIVE'S AUTHORITY

19 * * *

20 (b) No election may ~~shall~~ be conducted under this section in a bargaining
21 ~~unit or a subdivision within which in the preceding 12 months a valid election~~

1 ~~or certification of a representative pursuant to this subchapter has been held~~
2 occurred.

3 Sec. 9. 21 V.S.A. § 1724 is amended to read:

4 § 1724. CERTIFICATION PROCEDURE

5 * * *

6 (e)(1) ~~In~~ Except as otherwise provided pursuant to subsection (h) of this
7 section, in determining the representation of municipal employees in a
8 collective bargaining unit, the Board shall conduct an election by secret ballot
9 of the employees and certify the results to the interested parties and to the
10 employer. The election shall be held not more than 23 business days after the
11 petition is filed with the Board except as otherwise provided pursuant to
12 subdivision (4) of this subsection.

13 * * *

14 (h)(1) Notwithstanding subsections (e)–(g) of this section, if following its
15 investigation pursuant to subsection (b) of this section the Board determines
16 that a petition to be represented for collective bargaining filed pursuant to
17 subsection (a) of this section, which identifies a proposed bargaining agent,
18 bears the signatures of at least 50 percent plus one of the employees in the
19 bargaining unit, the Board shall certify the individual or labor organization
20 identified as the bargaining agent.

1 ~~(2) Certification of a bargaining agent shall only be available pursuant~~
2 ~~to this subsection when no other individual or labor organization is currently~~
3 ~~certified or recognized as the agent of the employees in the bargaining unit.~~

4 (i) No election ~~may~~ shall be conducted under this section in a bargaining
5 unit or a subdivision within which in the preceding 12 months a valid election
6 has been held.

7 Sec. 10. EFFECTIVE DATE

8 ~~This act shall take effect on July 1, 2023.~~

Sec. 1. 21 V.S.A. § 495o is added to read:

§ 495o. EMPLOYER COMMUNICATIONS RELATING TO RELIGIOUS
OR POLITICAL MATTERS; EMPLOYEE RIGHTS

(a) An employer, or an employer's agent, shall not discharge, discipline,
penalize, or otherwise discriminate against, or threaten to discharge,
discipline, penalize, or otherwise discriminate against, an employee:

(1) because the employee declines:

(A) to attend or participate in an employer-sponsored meeting that
has the primary purpose of communicating the employer's opinion about
religious or political matters; or

(B) to view or participate in communications with or from the
employer or the employer's agent that have the primary purpose of
communicating the employer's opinion about religious or political matters; or

(2) as a means of requiring an employee to:

(A) attend an employer-sponsored meeting that has the primary
purpose of communicating the employer's opinion about religious or political
matters; or

(B) view or participate in communications with or from the employer
or the employer's agent that have the primary purpose of communicating the
employer's opinion about religious or political matters.

(b) Nothing in this section shall be construed to:

(1) limit an employee's right to bring a civil action for wrongful

termination; or

(2) diminish or limit any rights provided to an employee pursuant to a collective bargaining agreement or employment contract.

(c) Nothing in this section shall be construed to prohibit an employer that is a religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from:

(1) communicating with its employees regarding the employer's opinion on religious matters;

(2) requiring its employees to attend a meeting regarding the employer's opinion on religious matters; or

(3) requiring its employees to view or participate in communications from the employer or the employer's agent regarding the employer's opinion on religious matters.

(d) Nothing in this section shall be construed to prohibit an employer that is a political organization, a political party, or an organization that engages, in substantial part, in political matters from:

(1) communicating with its employees regarding the employer's opinion on political matters;

(2) requiring its employees to attend a meeting regarding the employer's opinion on political matters; or

(3) requiring its employees to view or participate in communications from the employer or the employer's agent regarding the employer's opinion on political matters.

(e) Nothing in this section shall be construed to prohibit an employer or the employer's agent from:

(1) communicating information to an employee:

(A) that the employer is required to communicate pursuant to State or federal law; or

(B) that is necessary for the employee to perform the employee's job functions or duties;

(2) requiring an employee to attend a meeting to discuss issues related to the employer's business or operation when the discussion is necessary for the employee to perform the employee's job functions or duties; or

(3) offering meetings, forums, or other communications about religious

or political matters for which attendance or participation is entirely voluntary.

(f)(1) The penalty and enforcement provisions of section 495b of this subchapter shall apply to this section.

(2) The provisions against retaliation in subdivision 495(a)(8) of this subchapter shall apply to this section.

(g) As used in this section:

(1) "Political matters" means matters relating to political affiliation, elections for political office, political parties, legislative proposals, proposals to change rules or regulations, and the decision to join or support any political party or political, civic, community, fraternal, or labor organization.

(2) "Religious matters" means matters relating to religious affiliation and practice and the decision to join or support any religious or denominational organization or institution.

Sec. 2. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

As used in this chapter:

* * *

(6) "Employee" includes any employee, and is not limited to the employees of a particular employer unless this chapter explicitly states otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment, but does not include an individual;:

~~(A)~~ employed as an agricultural laborer;

~~(B)~~ employed by his or her the individual's parent or spouse;

~~(C)~~ employed in the domestic service of any family or person at his or her home;

~~(D)~~(B) having the status of an independent contractor;

~~(E)~~(C) employed as a supervisor;

~~(F)~~(D) employed by an employer subject to the Railway Labor Act as amended from time to time; or

~~(G)~~(E) employed by any other person who is not an employer as defined in subdivision (7) of this section.

* * *

Sec. 3. 3 V.S.A. § 941 is amended to read:

*§ 941. UNIT DETERMINATION, CERTIFICATION, AND
REPRESENTATION*

** * **

(e)(1) Whenever, on the basis of a petition pursuant to subdivision (d)(1) of this section or a hearing pursuant to subdivision (d)(2) of this section, the Board finds substantial interest among employees in forming a bargaining unit or being represented for purposes of collective bargaining, a secret ballot election shall be conducted by the Board not more than 23 business days after the petition is filed with the Board except as otherwise provided pursuant to subdivision (4) of this subsection and subdivision (g)(4) of this section.

** * **

(g)(1) In determining the representation of State employees in a collective bargaining unit, the Board shall conduct a secret ballot of the employees within the time period set forth in subdivision (e)(1) of this section, unless the time to conduct the election is extended pursuant to subdivision (e)(4) of this section, and certify the results to the interested parties and to the State employer. The original ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. No representative will be certified with less than a majority of the votes cast by employees in the bargaining unit.

** * **

(4)(A) Notwithstanding any other provision of this subsection (g), if the Board determines that a petition to be represented for collective bargaining filed pursuant to subsection (c) of this section, which identifies a proposed exclusive representative of the employees in the bargaining unit, bears the signatures of at least 50 percent plus one of the employees in a bargaining unit deemed appropriate by the Board pursuant to this section, the Board shall certify the person or labor organization as the exclusive representative of the bargaining unit.

(B) Certification of a collective bargaining representative shall only be available pursuant to this subdivision (g)(4) when no other person or labor organization is currently certified or recognized as the exclusive representative of the employees in the bargaining unit.

(h) A representative chosen ~~by secret ballot~~ for the purposes of collective bargaining by a majority of the votes cast ~~by secret ballot or certified pursuant to subdivision (g)(4) of this section~~ shall be the exclusive representative of all the employees in ~~such~~ the bargaining unit for a minimum of one year. ~~Such~~

The representative shall be eligible for reelection or for recertification pursuant to subdivision (g)(4) of this section.

* * *

Sec. 4. 16 V.S.A. § 1992 is amended to read:

§ 1992. REFERENDUM PROCEDURE FOR REPRESENTATION

~~(a)(1) An organization purporting to represent a majority of all of the teachers or administrators employed by the school board may be recognized by the school board without the necessity of a referendum upon the submission of a petition bearing the valid signatures of a majority of the teachers or administrators employed by that school board. Within 15 calendar days after receiving the petition, the school board shall notify the teachers or administrators of the school district in writing of its intention to either require or waive a secret ballot referendum. If the school board gives notice of its intention to waive a referendum and recognize an organization, 10 percent of the teachers or administrators employed by the school board may submit a petition within 15 calendar days thereafter, objecting to the granting of recognition without a referendum, in which event a secret ballot referendum shall be held in the district for the purpose of choosing an exclusive representative as provided pursuant to the provisions of this section. The school board and the organization purporting to represent a majority of the teachers or administrators shall, within 10 business days after the petition is submitted, agree on an impartial third party to examine the petition and determine whether a majority of the teachers or administrators support the organization. If the parties fail to agree on an impartial third party within 10 business days, the Vermont Labor Relations Board shall examine the petition and determine whether a majority of the teachers or administrators support the organization. If the impartial party or the Board determines that a majority of the teachers or administrators support the organization, it shall certify the organization as the exclusive representative of the teachers or administrators.~~

* * *

~~(b) Recognition granted to Certification of a negotiating unit as exclusive representative shall be valid and not subject to challenge by referendum petition or otherwise for the remainder of the fiscal year in which recognition is granted the certification occurs and for an additional period of 12 months after final adoption of the budget for the succeeding fiscal year and shall continue thereafter until a new referendum is called for.~~

~~(c)(1)(A) A secret ballot referendum shall be held not more than 21 calendar days after 20 percent of the teachers or administrators employed by~~

the school board present a petition requesting a referendum on the matter of representation, except during a period of prior ~~recognition~~ certification, as provided pursuant to subsection (b) of this section.

* * *

Sec. 5. 21 V.S.A. § 1581 is amended to read:

*§ 1581. PETITIONS FOR ELECTION; FILING, INVESTIGATIONS,
HEARINGS, DETERMINATIONS*

* * *

(b)(1) The Board shall investigate the petition and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing before the Board itself, a Board member thereof, or its agents appointed for that purpose upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing.

(2) If the Board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot marked at the place of election and certify to the parties, in writing, the results thereof of the election.

(3)(A) If the Board finds upon the record of the hearing that a petition to be represented for collective bargaining filed pursuant to subdivision (a)(1)(A) of this section, which identifies a proposed bargaining representative, bears the signatures of at least 50 percent plus one of the employees in the bargaining unit, the Board shall certify the individual or labor organization identified as the bargaining representative.

(B) Certification of a representative shall only be available pursuant to this subdivision (B) when no other individual or labor organization is currently certified or recognized as the bargaining representative.

(c) In determining whether or not a question of representation exists, ~~it~~ the Board shall apply the same regulations and rules of decision regardless of the identity of the persons filing the petition or the kind of relief sought.

* * *

Sec. 6. 21 V.S.A. § 1584 is amended to read:

*§ 1584. PETITIONS AND ELECTION TO RESCIND
REPRESENTATIVE'S AUTHORITY*

* * *

(b) ~~No election may~~ shall be conducted under this section in a bargaining

unit or a subdivision within which in the preceding 12 months a valid election or certification of a representative pursuant to this subchapter has been held occurred.

Sec. 7. 21 V.S.A. § 1724 is amended to read:

§ 1724. CERTIFICATION PROCEDURE

* * *

(e)(1) ~~In~~ Except as otherwise provided pursuant to subsection (h) of this section, in determining the representation of municipal employees in a collective bargaining unit, the Board shall conduct an election by secret ballot of the employees and certify the results to the interested parties and to the employer. The election shall be held not more than 23 business days after the petition is filed with the Board except as otherwise provided pursuant to subdivision (4) of this subsection.

* * *

(h)(1) Notwithstanding subsections (e)–(g) of this section, if following its investigation pursuant to subsection (b) of this section the Board determines that a petition to be represented for collective bargaining filed pursuant to subsection (a) of this section, which identifies a proposed bargaining agent, bears the signatures of at least 50 percent plus one of the employees in the bargaining unit, the Board shall certify the individual or labor organization identified as the bargaining agent.

(2) Certification of a bargaining agent shall only be available pursuant to this subsection when no other individual or labor organization is currently certified or recognized as the agent of the employees in the bargaining unit.

(i) No election ~~may~~ shall be conducted under this section in a bargaining unit or a subdivision within which in the preceding 12 months a valid election has been held.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2023.