

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General and Housing to which was referred Senate Bill  
3 No. 103 entitled “An act relating to amending the prohibitions against  
4 discrimination” respectfully reports that it has considered the same and  
5 recommends that the House propose to the Senate that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

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

9 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

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

18 \* \* \*

19 (3) For any employment agency to fail or refuse to classify properly or  
20 refer for employment or to otherwise harass or discriminate against any  
21 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; to limit, segregate, or qualify its  
4 membership with respect to 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 ~~to discriminate against any individual or against a~~  
7 ~~qualified individual with a disability or to limit, segregate, or qualify its~~  
8 ~~membership;~~ or against a qualified individual with a disability.

9 \* \* \*

10 (7) For any employer, employment agency, labor organization, or  
11 person seeking employees to discriminate between employees on the basis of  
12 sex, race, or national origin or against a qualified individual with a disability  
13 by paying wages to employees of one sex, race, or national origin or an  
14 employee who is a qualified individual with a disability at a rate less than the  
15 rate paid to employees of the other sex or a different race or national origin or  
16 without the physical or mental condition of the qualified individual with a  
17 disability for equal work that requires equal skill, effort, and responsibility and  
18 is performed under similar working conditions. An employer who is paying  
19 wages in violation of this section shall not reduce the wage rate of any other  
20 employee in order to comply with this subsection.

21 (A) An employer may pay different wage rates under this subsection

1 when the differential wages are made pursuant to:

2 \* \* \*

3 (iv) A bona fide factor other than sex, race, national origin, or  
4 physical or mental condition. An employer asserting that differential wages  
5 are paid pursuant to this subdivision (7)(A)(iv) shall demonstrate that the factor  
6 does not perpetuate a ~~sex-based~~ differential in compensation; based on sex,  
7 race, national origin, or physical or mental condition; is job-related with  
8 respect to the position in question; and is based upon a legitimate business  
9 consideration.

10 \* \* \*

11 (C) Nothing in this section shall be construed to diminish an  
12 employee's right to privacy regarding a disability or physical or mental  
13 condition under any other law, or pursuant to an applicable contract or  
14 collective bargaining agreement.

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

18 \* \* \*

19 (i) An agreement to settle a claim of a violation of subsection (a) of this  
20 section shall not prohibit, prevent, or otherwise restrict the employee from  
21 working for the employer or any parent company, subsidiary, division, or

1 affiliate of the employer. Any provision of an agreement to settle a claim of a  
2 violation of subsection (a) of this section that violates this subsection shall be  
3 void and unenforceable with respect to the individual who made the claim.

4 (j) Except for claims alleging a violation of subdivision (a)(7) of this  
5 section **or disparate impact discrimination** an employee shall not be required to  
6 demonstrate the existence of another employee or individual to whom the  
7 employee’s treatment can be compared to establish a violation of this section.

8 (k) Notwithstanding any State or federal judicial precedent to the contrary:

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

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

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

15 § 495d. DEFINITIONS

16 As used in this subchapter:

17 \* \* \*

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

21 (A)(i) submission to that conduct is made either explicitly or

1 implicitly a term or condition of employment;

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

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

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

10 \* \* \*

11 (16) “Harass” means to engage in unwelcome conduct based on an  
12 employee’s race, color, religion, national origin, sex, sexual orientation, gender  
13 identity, ancestry, place of birth, age, crime victim status, or physical or mental  
14 condition that interferes with the employee’s work or creates a work  
15 environment that is intimidating, hostile, or offensive. 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.

20 (B) Incidents that may be harassment shall be considered in the  
21 aggregate with varying types of conduct and conduct based on multiple

1 characteristics viewed in totality rather than in isolation.

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

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

4 (ii) the complaining employee 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) the complaining employee was able to continue carrying out  
9 the employee’s job duties and responsibilities despite the conduct;

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

11 (vi) the conduct occurred outside the workplace.

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

13 § 4501. DEFINITIONS

14 As used in this chapter:

15 \* \* \*

16 (12)(A) “Harass” means to engage in unwelcome conduct that detracts  
17 from, undermines, or interferes with a person’s:

18 (i) use of a place of public accommodation or any of the  
19 accommodations, advantages, facilities, or privileges of a place of public  
20 accommodation because of the person’s race, creed, color, national origin,  
21 marital status, sex, sexual orientation, gender identity, or disability; or

1           (ii) terms, conditions, privileges, or protections in the sale or rental  
2           of a dwelling or other real estate, or in the provision of services or facilities in  
3           connection with a dwelling or other real estate, because of the person’s race,  
4           sex, sexual orientation, gender identity, age, marital status, religious creed,  
5           color, national origin, or disability, or because the person intends to occupy a  
6           dwelling with one or more minor children, or because the person is a recipient  
7           of public assistance, or because the person is a victim of abuse, sexual assault,  
8           or stalking.

9           (B) Notwithstanding any judicial precedent to the contrary, harassing  
10           conduct need not be severe or pervasive to be unlawful pursuant to the  
11           provisions of this chapter. In determining whether conduct constitutes  
12           unlawful harassment:

13           (i) The determination shall be made on the basis of the record as a  
14           whole, according to the totality of the circumstances, and a single incident may  
15           constitute unlawful harassment.

16           (ii) Incidents that may be harassment shall be considered in the  
17           aggregate with varying types of conduct and conduct based on multiple  
18           characteristics viewed in totality rather than in isolation.

19           (iii) Conduct may constitute unlawful harassment, regardless of  
20           whether:

21           (I) the complaining person is the person being harassed;

1                    (II) the complaining person acquiesced or otherwise submitted  
2 to or participated in the conduct;

3                    (III) the conduct is also experienced by others outside the  
4 protected class involved in the conduct;

5                    (IV) despite the conduct, the complaining person was able to:

6                    (aa) use the place of public accommodation or any of the  
7 accommodations, advantages, facilities, or privileges of the place of public  
8 accommodation; or

9                    (bb) enjoy the benefit of applicable terms, conditions,  
10 privileges, or protections in the sale or rental of the dwelling or other real  
11 estate, or to obtain services or facilities in connection with the dwelling or  
12 other real estate;

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

15                    (VI) the conduct occurred outside the place of public  
16 accommodation or the dwelling or other real estate.

17                    (C) Behavior that a reasonable person with the same protected  
18 characteristic would consider to be a petty slight or trivial inconvenience shall  
19 not constitute unlawful harassment or discrimination pursuant to this chapter.

20                    Sec. 4. 9 V.S.A. § 4503 is amended to read:

21                    § 4503. UNFAIR HOUSING PRACTICES



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\* \* \*

~~(d)(1) As used in this section, “harass” means to engage in unwelcome conduct that detracts from, undermines, or interferes with the person’s terms, conditions, privileges, or protections in the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection with a dwelling or other real estate, because of the person’s race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability, or because the person intends to occupy a dwelling with one or more minor children, or because the person is a recipient of public assistance, or because the person is a victim of abuse, sexual assault, or stalking.~~

~~(2) Notwithstanding any judicial precedent to the contrary, harassing conduct need not be severe or pervasive to be unlawful pursuant to the provisions of this section. In determining whether conduct constitutes unlawful harassment:~~

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

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

1           ~~(C) 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 to~~  
5 ~~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) the complaining person was able to enjoy the benefit of~~  
9 ~~applicable terms, conditions, privileges, or protections in the sale or rental of~~  
10 ~~the dwelling or other real estate, or to obtain services or facilities in connection~~  
11 ~~with the dwelling or other real estate, despite the conduct;~~

12           ~~(v) the conduct resulted in a physical or psychological injury; or~~  
13           ~~(vi) the conduct occurred outside the dwelling or other real estate.~~

14           ~~(3) behavior that a reasonable person with the same protected~~  
15 ~~characteristic would consider to be a petty slight or trivial inconvenience shall~~  
16 ~~not constitute unlawful harassment or discrimination pursuant to this section.~~

17 [Repealed.]

18 **Sec. 5. 16 V.S.A. § 11 is amended to read:**

19 **§ 11. CLASSIFICATIONS AND DEFINITIONS**

20 **(a) As used in this title, unless the context otherwise clearly requires:**

21 \* \* \*



1 (I) the complaining student is the person being harassed;

2 (II) the complaining student acquiesced or otherwise submitted  
3 to or participated in the conduct;

4 (III) the conduct is also experienced by others outside the  
5 protected class involved in the conduct;

6 (IV) the complaining student was able to continue the student's  
7 education or access to school resources in spite of the conduct;

8 (V) the conduct resulted in a physical or psychological injury;  
9 or

10 (VI) the conduct occurred outside the complaining student's  
11 school.

12 (iv) Behavior that a reasonable person with the same protected  
13 characteristic would consider to be a petty slight or trivial inconvenience shall  
14 not constitute harassment pursuant to this subdivision (a)(26).

15 \* \* \*

16 Sec. 6. 16 V.S.A. § 570f is amended to read:

17 § 570f. HARASSMENT; NOTICE AND RESPONSE

18 \* \* \*

19 (c) To prevail in an action alleging unlawful harassment filed pursuant to  
20 this section and 9 V.S.A. chapter 139, the plaintiff shall prove both of the  
21 following:

