

1 S.103

2 Representatives Bartley of Fairfax, Hango of Berkshire, Labor of Morgan,
3 and Parsons of Newbury move that the House propose to the Senate that the
4 bill be amended by striking out all after the enacting clause and inserting in
5 lieu thereof the following:

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

7 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

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

16 * * *

17 (3) For any employment agency to fail or refuse to classify properly or
18 refer for employment or to otherwise harass or discriminate against any
19 individual because of race, color, religion, ancestry, national origin, sex, sexual
20 orientation, gender identity, place of birth, crime victim status, or age or
21 against a qualified individual with a disability;

1 (A) An employer may pay different wage rates under this subsection
2 when the differential wages are made pursuant to:

3 * * *

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

11 * * *

12 (C) Nothing in this subdivision (a)(7) shall be construed to:

13 (i) create any new rights for an employer to inquire about a
14 characteristic of an employee that is otherwise unknown to the employer upon
15 which pay discrimination is prohibited pursuant to the provisions of this
16 subdivision (a)(7); or

17 (ii) diminish an employee's right to privacy under any other law or
18 pursuant to an applicable contract or collective bargaining agreement.

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

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(i) An agreement to settle a claim of a violation of subsection (a) of this section shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim.

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

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

§ 495d. DEFINITIONS

As used in this subchapter:

* * *

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

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

(B)(ii) submission to or rejection of such conduct by an individual is

1 used as a component of the basis for employment decisions affecting that
2 individual; or

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

6 (B) For purposes of subdivision (a)(iii) of this subdivision (13), a
7 determination of whether conduct constitutes unlawful sexual harassment shall
8 be subject to the same requirements and made in the same manner as a
9 determination of whether conduct constitutes unlawful harassment as defined
10 pursuant to subdivision (16) of this section.

11 * * *

12 (16) “Harass” means to engage in unwelcome conduct based on an
13 employee’s race, color, religion, national origin, sex, sexual orientation, gender
14 identity, ancestry, place of birth, age, crime victim status, or physical or mental
15 condition that is sufficiently severe or pervasive to interfere with the
16 employee’s work or create a work environment that is intimidating, hostile, or
17 offensive. In determining whether conduct constitutes harassment:

18 (A)(i) The determination shall be made on the basis of the record as a
19 whole, according to the totality of the circumstances.

20 (ii) Factors to be considered in determining whether conduct
21 constitutes unlawful harassment include:

1 (I) the nature, severity, frequency, duration, and location of the
2 conduct;

3 (II) whether the conduct is threatening or humiliating; and

4 (III) whether any party to the conduct held a position of
5 authority or power, whether formal or informal, over the employee.

6 (iii) A single incident may constitute unlawful harassment if it is
7 sufficiently severe to clearly create an intimidating, hostile, or offensive
8 working environment.

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

12 (C) Conduct may constitute unlawful harassment if it alters an
13 employee’s working conditions in a manner that would make it more difficult
14 for a reasonable person to do the job. The employee’s work performance or
15 productivity does not need to decline as a result of the conduct for it to
16 constitute unlawful harassment.

17 (D) Discriminatory conduct in an employee’s presence that is not
18 directed at that employee or is directed at another employee can contribute to
19 an intimidating, hostile, or offensive work environment.

20 (E) Conduct that an employee acquiesces or submits to or participates
21 in may be discriminatory harassment if the conduct is unwelcome.

1 sufficiently severe or pervasive to detract from, undermine, or interfere with a
2 person's:

3 (i) use of a place of public accommodation or any of the
4 accommodations, advantages, facilities, or privileges of a place of public
5 accommodation because of the person's race, creed, color, national origin,
6 marital status, sex, sexual orientation, gender identity, or disability; or

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

15 (B) In determining whether conduct constitutes unlawful harassment:

16 (i) The determination shall be made on the basis of the record as a
17 whole, according to the totality of the circumstances.

18 (ii) Factors to be considered in determining whether conduct
19 constitutes unlawful harassment include:

20 (I) the nature, severity, frequency, duration, and location of the
21 conduct;

1 (II) whether the conduct is threatening or humiliating; and

2 (III) whether any party to the conduct held a position of

3 authority or power, whether formal or informal, over the person.

4 (iii) A single incident may constitute unlawful harassment if it is

5 sufficiently severe that it detracts from, undermines, or interferes with a

6 person's:

7 (I) use of a place of public accommodation or any of the

8 accommodations, advantages, facilities, or privileges of a place of public

9 accommodation; or

10 (II) terms, conditions, privileges, or protections in the sale or

11 rental of a dwelling or other real estate, or in the provision of services or

12 facilities in connection with a dwelling or other real estate.

13 (iv) Incidents that may be harassment shall be considered in the

14 aggregate with varying types of conduct and conduct based on multiple

15 characteristics viewed in totality rather than in isolation.

16 (v) Discriminatory conduct in a person's presence that is not

17 directed at the person or is directed at another person can detract from,

18 undermine, or interfere with a person's:

19 (I) use the place of public accommodation or any of the

20 accommodations, advantages, facilities, or privileges of the place of public

21 accommodation; or

1 (II) enjoyment of the benefit of applicable terms, conditions,
2 privileges, or protections in the sale or rental of the dwelling or other real
3 estate, or to obtain services or facilities in connection with the dwelling or
4 other real estate

5 (vi) Conduct that a person acquiesces or submits to or participates
6 in may be discriminatory harassment if the conduct is unwelcome.

7 (vii) Conduct that is discriminatory towards members of a
8 protected class may constitute unlawful harassment even though it is
9 experienced by both a person who is a member of that protected class and
10 others who are not members of that protected class.

11 (viii) Conduct may constitute unlawful harassment even if the
12 person is able to:

13 (aa) use the place of public accommodation or any of the
14 accommodations, advantages, facilities, or privileges of the place of public
15 accommodation; or

16 (bb) enjoy the benefit of applicable terms, conditions,
17 privileges, or protections in the sale or rental of the dwelling or other real
18 estate, or to obtain services or facilities in connection with the dwelling or
19 other real estate.

20 (ix) Discriminatory or harassing conduct does not need to result in
21 a physical or psychological injury to an employee to constitute unlawful

1 harassment.

2 (x) Discriminatory or harassing conduct that occurs outside of the
3 place of public accommodation or the dwelling or other real estate may
4 constitute unlawful harassment if it detracts from, undermine, or interfere with
5 a person's:

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

9 (II) enjoyment of the terms, conditions, privileges, or
10 protections in the sale or rental of the dwelling or other real estate, or in the
11 provision of services or facilities in connection with the dwelling or other real
12 estate.

13 (C) The provisions of this subdivision (12) shall not apply to any
14 action brought under this chapter pursuant to the provisions of 16 V.S.A.
15 § 570f.

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

17 § 4503. UNFAIR HOUSING PRACTICES

18 * * *

19 ~~(d)(1) As used in this section, “harass” means to engage in unwelcome~~
20 ~~conduct that detracts from, undermines, or interferes with the person’s terms,~~
21 ~~conditions, privileges, or protections in the sale or rental of a dwelling or other~~

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

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

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

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

18 (C) ~~Conduct may constitute unlawful harassment, regardless of~~
19 ~~whether:~~

20 (i) ~~the complaining person is the person being harassed;~~

21 (ii) ~~the complaining person acquiesced or otherwise submitted to~~

1 ~~or participated in the conduct;~~

2 ~~(iii) the conduct is also experienced by others outside the~~
3 ~~protected class involved in the conduct;~~

4 ~~(iv) the complaining person was able to enjoy the benefit of~~
5 ~~applicable terms, conditions, privileges, or protections in the sale or rental of~~
6 ~~the dwelling or other real estate, or to obtain services or facilities in connection~~
7 ~~with the dwelling or other real estate, despite the conduct;~~

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

9 ~~(vi) the conduct occurred outside the dwelling or other real estate.~~

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

13 [Repealed.]

14 Sec. 5. EFFECTIVE DATE

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