

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, national origin, sexual orientation, or gender identity or against a
13 qualified individual with a disability by paying wages to employees of one sex,
14 race, national origin, sexual orientation, or gender identity or an employee who
15 is a qualified individual with a disability at a rate less than the rate paid to
16 employees of the other sex or a different race, national origin, sexual
17 orientation, or gender identity or without the physical or mental condition of
18 the qualified individual with a disability for equal work that requires equal
19 skill, effort, and responsibility and is performed under similar working
20 conditions. An employer who is paying wages in violation of this section shall

1 not reduce the wage rate of any other employee in order to comply with this
2 subsection.

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

5 * * *

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

13 * * *

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

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

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

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

4 * * *

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

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

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

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

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

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

2 § 495d. DEFINITIONS

3 As used in this subchapter:

4 * * *

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

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

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

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

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

18 * * *

19 (16) “Harass” means to engage in unwelcome conduct based on an
20 employee’s race, color, religion, national origin, sex, sexual orientation, gender
21 identity, ancestry, place of birth, age, crime victim status, or physical or mental

1 condition that interferes with the employee’s work or creates a work
2 environment that is intimidating, hostile, or offensive. In determining whether
3 conduct constitutes harassment:

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

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

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

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

12 (ii) the complaining employee acquiesced or otherwise submitted
13 to or participated in the conduct;

14 (iii) the conduct is also experienced by others outside the
15 protected class involved in the conduct;

16 (iv) the complaining employee was able to continue carrying out
17 the employee’s job duties and responsibilities despite the conduct;

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

19 (vi) the conduct occurred outside the workplace.

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

21 § 4501. DEFINITIONS

1 As used in this chapter:

2 * * *

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

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

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

17 (B) Notwithstanding any judicial precedent to the contrary, harassing
18 conduct need not be severe or pervasive to be unlawful pursuant to the
19 provisions of this chapter. In determining whether conduct constitutes
20 unlawful 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 unlawful 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 person is the person being harassed;

10 (II) the complaining person 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) despite the conduct, the complaining person was able to:

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

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

1 (V) the conduct resulted in a physical or psychological injury;
 2 or
 3 (VI) the conduct occurred outside the place of public
 4 accommodation or the dwelling or other real estate.

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

8 (D) The provisions of this subdivision (12) shall not apply to any
 9 action brought under this chapter pursuant to the provisions of 16 V.S.A.
 10 § 570f.

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

12 § 4503. UNFAIR HOUSING PRACTICES

13 * * *

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

1 assistance, or because the person is a victim of abuse, sexual assault, or
2 stalking.

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

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

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

13 ~~(C) Conduct may constitute unlawful harassment, regardless of~~
14 ~~whether:~~

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

16 ~~(ii) the complaining person acquiesced or otherwise submitted to~~
17 ~~or participated in the conduct;~~

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

20 ~~(iv) the complaining person was able to enjoy the benefit of~~
21 ~~applicable terms, conditions, privileges, or protections in the sale or rental of~~

1 ~~the dwelling or other real estate, or to obtain services or facilities in connection~~
2 ~~with the dwelling or other real estate, despite the conduct;~~

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

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

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

8 [Repealed.]

9 **Sec. 5. EFFECTIVE DATE**

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

11

12

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14

15 (Committee vote: _____)

16

17

18

Representative _____

FOR THE COMMITTEE