

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, color, religion, ancestry, national origin, sexual orientation, gender
13 identity, place of birth, crime victim status, or age or against a qualified
14 individual with a disability by paying wages to employees of one sex, race,
15 color, religion, ancestry, national origin, sexual orientation, gender identity,
16 place of birth, crime victim status, or age or an employee who is a qualified
17 individual with a disability at a rate less than the rate paid to employees of the
18 other sex or a different race, color, religion, ancestry, national origin, sexual
19 orientation, gender identity, place of birth, crime victim status, or age or
20 without the physical or mental condition of the qualified individual with a
21 disability for equal work that requires equal skill, effort, and responsibility and

1 is performed under similar working conditions. An employer who is paying
2 wages in violation of this section shall not reduce the wage rate of any other
3 employee in order to comply with this subsection.

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

6 * * *

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

16 * * *

17 (C) Nothing in this section shall be construed to diminish an
18 employee's right to privacy under any other law, or pursuant to an applicable
19 contract or collective bargaining agreement.

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

1 any employee because the employee:

2 * * *

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

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

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

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

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

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

20 § 495d. DEFINITIONS

21 As used in this subchapter:

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

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

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

* * *

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

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

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

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

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

9 (ii) the complaining employee acquiesced or otherwise submitted
10 to or participated in the conduct;

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

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

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

16 (vi) the conduct occurred outside the workplace.

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

18 § 4501. DEFINITIONS

19 As used in this chapter:

20 * * *

21 (12)(A) “Harass” means to engage in unwelcome conduct that detracts

1 from, undermines, or interferes with a person's:

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

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

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

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

21 (ii) Incidents that may be harassment shall be considered in the

1 aggregate with varying types of conduct and conduct based on multiple
2 characteristics viewed in totality rather than in isolation.

3 (iii) Conduct may constitute unlawful harassment, regardless of
4 whether:

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

6 (II) the complaining person acquiesced or otherwise submitted
7 to or participated in the conduct;

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

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

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

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

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

19 or

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

1 whole, according to the totality of the circumstances, and a single incident may
2 constitute unlawful harassment.

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

6 ~~(C) Conduct may constitute unlawful harassment, regardless of~~
7 ~~whether:~~

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

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

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

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

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

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

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

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

4 (iii) Conduct may constitute unlawful harassment, regardless of
5 whether:

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

7 (II) the complaining student acquiesced or otherwise submitted
8 to or participated in the conduct;

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

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

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

15 (VI) the conduct occurred outside the complaining student's
16 school.

17 (iv) 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 harassment pursuant to this subdivision (a)(26).

20 * * *

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

1 § 570f. HARASSMENT; NOTICE AND RESPONSE

2 * * *

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

6 ~~(1) The that the student was subjected to unwelcome conduct based on~~
7 ~~the student's or the student's family member's actual or perceived membership~~
8 ~~in a category protected by law by pursuant to 9 V.S.A. § 4502.~~

9 ~~(2) The conduct was either:~~

10 ~~(A) for multiple instances of conduct, so pervasive that when viewed~~
11 ~~from an objective standard of a similarly situated reasonable person, it~~
12 ~~substantially and adversely affected the targeted student's equal access to~~
13 ~~educational opportunities or benefits provided by the educational institution; or~~

14 ~~(B) for a single instance of conduct, so severe that when viewed from~~
15 ~~an objective standard of a similarly situated reasonable person, it substantially~~
16 ~~and adversely affected the targeted student's equal access to educational~~
17 ~~opportunities or benefits provided by the educational institution.~~

18 * * *

19 Sec. 7. EFFECTIVE DATE

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

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2 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE