

1 TO THE HONORABLE SENATE:

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

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

8 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

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

17 * * *

18 (3) For any employment agency to fail or refuse to classify properly or
19 refer for employment or to otherwise harass or discriminate against any
20 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.

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

11 * * *

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

15 * * *

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

1 (j) An employee shall not be required to demonstrate the existence of
2 another employee or individual to whom the employee’s treatment can be
3 compared in determining whether a violation of the provisions of this section
4 occurred.

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

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

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

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

12 § 495d. DEFINITIONS

13 As used in this subchapter:

14 * * *

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

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

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

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

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

9 * * *

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

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

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

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

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

3 (ii) the complaining employee acquiesced or otherwise submitted
4 to or participated in the conduct;

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

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

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

10 (vi) the conduct occurred outside the workplace.

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

12 § 4501. DEFINITIONS

13 As used in this chapter:

14 * * *

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

17 (i) use of a place of public accommodation or any of the
18 accommodations, advantages, facilities, or privileges of a place of public
19 accommodation because of the person’s race, creed, color, national origin,
20 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.

1 (D) The provisions of this subdivision (12) shall not apply to any
2 action brought under this chapter pursuant to the provisions of 16 V.S.A.
3 § 570f.

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

5 § 4503. UNFAIR HOUSING PRACTICES

6 * * *

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

17 ~~(2) 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 section. In determining whether conduct constitutes~~
20 ~~unlawful 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 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 to~~
11 ~~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) the complaining person was able to enjoy the benefit of~~
15 ~~applicable terms, conditions, privileges, or protections in the sale or rental of~~
16 ~~the dwelling or other real estate, or to obtain services or facilities in connection~~
17 ~~with the dwelling or other real estate, despite the conduct;~~

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

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

20 ~~(3) behavior that a reasonable person with the same protected~~
21 ~~characteristic would consider to be a petty slight or trivial inconvenience shall~~

1 ~~not constitute unlawful harassment or discrimination pursuant to this section.~~

2 [Repealed.]

3 **Sec. 5. EFFECTIVE DATE**

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

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11 (Committee vote: _____)

12

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Senator _____

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FOR THE COMMITTEE