

1

S.103

2 An act relating to amending the prohibitions against discrimination

3 The House proposes to the Senate to amend the bill by striking out all after

4 the enacting clause and inserting in lieu thereof the following:

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

6 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

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

15 \* \* \*

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

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

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

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

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

§ 495d. DEFINITIONS

As used in this subchapter:

\* \* \*





1           (12)(A) “Harass” means to engage in unwelcome conduct that detracts  
2 from, undermines, or interferes with a 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) Notwithstanding any judicial precedent to the contrary, harassing  
16 conduct need not be severe or pervasive to be unlawful pursuant to the  
17 provisions of this chapter. In determining whether conduct constitutes  
18 unlawful harassment:

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

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 person is the person being harassed;

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

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

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

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

20 or





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

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

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

11           ~~(C) Conduct may constitute unlawful harassment, regardless of~~  
12 ~~whether:~~

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

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

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

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

1           ~~(v) the conduct resulted in a physical or psychological injury; or~~  
2           ~~(vi) the conduct occurred outside the dwelling or other real estate.~~  
3           ~~(3) behavior that a reasonable person with the same protected~~  
4 ~~characteristic would consider to be a petty slight or trivial inconvenience shall~~  
5 ~~not constitute unlawful harassment or discrimination pursuant to this section.~~

6 [Repealed.]

7 Sec. 5. EFFECTIVE DATE

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