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H.329

Introduced by Representatives Christie of Hartford, Anthony of Barre City,  
Brumsted of Shelburne, Burrows of West Windsor, Cina of  
Burlington, Copeland Hanzas of Bradford, Dolan of Waitsfield,  
Donnally of Hyde Park, Mrowicki of Putney, Small of  
Winooski, Till of Jericho, Townsend of South Burlington,  
Troiano of Stannard, White of Bethel, and Yantachka of  
Charlotte

Referred to Committee on

Date:

Subject: Labor; employment practices; discrimination

Statement of purpose of bill as introduced: This bill proposes to amend the laws prohibiting discrimination in employment, education, public accommodations, and housing to provide that harassment need not be severe and pervasive to constitute unlawful discrimination and to establish a uniform six-year statute of limitations for claims of discrimination in employment, public accommodations, and housing. This bill also proposes to amend the law prohibiting employment discrimination to provide that an employee need not pursue an internal grievance process prior to filing a claim and shall not be required to demonstrate that a comparable employee was treated differently to prove that discrimination occurred.

1 An act relating to amending the prohibitions against discrimination

2 It is hereby enacted by the General Assembly of the State of Vermont:

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

4 § 495. UNLAWFUL EMPLOYMENT PRACTICE

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

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

13 \* \* \*

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

19 (4) For any labor organization, because of race, color, religion, ancestry,  
20 national origin, sex, sexual orientation, gender identity, place of birth, crime  
21 victim status, or age to harass or discriminate against any individual or against

1 a qualified individual with a disability or to limit, segregate, or qualify its  
2 membership;

3 \* \* \*

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

7 \* \* \*

8 (i)(1) An employee's decision not to pursue an internal grievance,  
9 complaint, or other remedial process with the employer, employment agency,  
10 or labor organization shall not be determinative in any claim that an employer,  
11 employment agency, or labor organization violated the provisions of this  
12 section.

13 (2) An employee shall not be required to demonstrate the existence of  
14 another employee or individual to whom the employee's treatment can be  
15 compared in determining whether a violation of the provisions of this section  
16 occurred.

17 (j)(1) The General Assembly finds that claims of unlawful discrimination  
18 in violation of the provisions of this section are rarely appropriate for summary  
19 judgment.

20 (2) Notwithstanding any State or federal judicial precedent to the  
21 contrary:

1           (A) the provisions of this section shall be construed liberally to  
2           accomplish its remedial purposes and any exceptions and exemptions to the  
3           provisions of this section shall be construed narrowly in order to maximize the  
4           deterrence of discriminatory behavior; and

5           (B) harassment and discrimination need not be severe and pervasive  
6           to constitute a violation of this section.

7           (3) Behavior that a reasonable employee with the same protected  
8           characteristics would consider to be a petty slight or trivial inconvenience shall  
9           not constitute unlawful harassment or discrimination pursuant to this section.

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

11        § 495d. DEFINITIONS

12        As used in this subchapter:

13   \* \* \*

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

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

19                (B)(ii) submission to or rejection of such conduct by an individual is  
20           used as a component of the basis for employment decisions affecting that  
21           individual; or

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

4           (B)(i) Sexual harassment need not be severe and pervasive in order to  
5           be unlawful pursuant to this subchapter.

6           \* \* \*

7           (16) "Harassment" is a form of discrimination and means unwelcome  
8           conduct based on an employee's race, color, religion, national origin, sex,  
9           sexual orientation, gender identity, ancestry, place of birth, age, crime victim  
10          status, or physical or mental condition that substantially interferes with the  
11          employee's work performance or creates a work environment that is  
12          intimidating, hostile, or offensive.

13          Sec. 3. 9 V.S.A. § 4500 is amended to read:

14          § 4500. LEGISLATIVE FINDINGS AND INTENT

15          (a) The General Assembly finds that claims of unlawful discrimination in  
16          violation of the provisions of this chapter are rarely appropriate for summary  
17          judgment.

18          (b) The provisions of this chapter establishing legal standards, duties, and  
19          requirements with respect to persons with disabilities in places of public  
20          accommodation as defined ~~herein~~ in this chapter, except those provisions  
21          relating to remedies, are intended to implement and to be construed so as to be

1 consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.  
2 and rules adopted ~~thereunder~~ under that Act, and are not intended to impose  
3 additional or higher standards, duties, or requirements than that act.

4 ~~(b)~~(c) Subsections 4502(b) and (c) of this title shall not be construed to  
5 create or impose on governmental entities additional or higher standards,  
6 duties, or requirements than that imposed by Title II of the Americans with  
7 Disabilities Act.

8 (d) Notwithstanding any State or federal judicial precedent to the contrary,  
9 the provisions of this chapter shall be construed liberally to accomplish its  
10 remedial purposes and any exceptions and exemptions to the provisions of this  
11 chapter shall be construed narrowly in order to maximize the deterrence of  
12 discriminatory behavior.

13 Sec. 4. 9 V.S.A. § 4501 is amended to read:

14 § 4501. DEFINITIONS

15 As used in this chapter:

16 \* \* \*

17 (12) “Harass” means to engage in unwelcome conduct based on a  
18 person’s race, color, religion, national origin, sex, sexual orientation, gender  
19 identity, ancestry, place of birth, age, crime victim status, or physical or mental  
20 condition that substantially detracts from, undermines, or interferes with the  
21 person’s terms, conditions, privileges, or protections in the sale or rental of a

1 dwelling or other real estate, or in the provision of services or facilities in  
2 connection with the sale or rental of a dwelling or other real estate.  
3 Notwithstanding any judicial precedent to the contrary, such conduct need not  
4 be severe and pervasive to be unlawful pursuant to the provisions of this  
5 chapter.

6 Sec. 5. 16 V.S.A. § 11 is amended to read:

7 § 11. CLASSIFICATIONS AND DEFINITIONS

8 (a) As used in this title, unless the context otherwise clearly requires:

9 \* \* \*

10 (26)(A) “Harassment” means an incident or incidents of verbal, written,  
11 visual, or physical conduct, including any incident conducted by electronic  
12 means, based on or motivated by a student’s or a student’s family member’s  
13 actual or perceived race, creed, color, national origin, marital status, sex,  
14 sexual orientation, gender identity, or disability that has the purpose or effect  
15 of objectively and substantially undermining and detracting from or interfering  
16 with a student’s educational performance or access to school resources or  
17 creating an objectively intimidating, hostile, or offensive environment.

18 \* \* \*

1            (C) Notwithstanding any judicial precedent to the contrary, the  
2            conduct described in this subdivision (a)(26) need not be severe and pervasive  
3            to constitute harassment.

4     \* \* \*

5            Sec. 6. 12 V.S.A. § 525 is added to read:

6            § 525. ACTIONS BASED ON DISCRIMINATION

7            An action under 9 V.S.A. § 4506(a) or 21 V.S.A. § 495b shall be  
8            commenced within six years after the cause of action accrues and not after.

9            Sec. 7. EFFECTIVE DATE

10          This act shall take effect on July 1, 2021.