

1 H.401

2 Introduced by Representatives Long of Newfane, McCoy of Poultney, and

3 Colburn of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Education; employment; housing; judiciary; racial and social equity

7 Statement of purpose of bill as introduced: This bill proposes to promote racial
8 and social equity in Vermont through multiple provisions relating to education,
9 employment, housing, law enforcement, and judicial practice and procedure.

10 An act relating to promoting racial and social equity in Vermont

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

12 * * * Education * * *

13 * * * Model Curriculum; Hate Speech; Discrimination * * *

14 Sec. 1a. 16 V.S.A. § 914 is added to read:

15 § 914. MODEL CURRICULUM; HATE SPEECH; DISCRIMINATION

16 (a) The Secretary of Education shall develop and maintain a model
17 curriculum for elementary and secondary schools to teach against hate speech
18 and hateful imagery and symbols and to enable students to recognize
19 discrimination. The curriculum shall include best practices for teaching these
20 concepts.

1 * * * Task Force on School Exclusionary Policies * * *

2 Sec. 1e. TASK FORCE ON SCHOOL EXCLUSIONARY POLICIES

3 (a) Creation. There is created the Task Force on School Exclusionary
4 Policies. The Task Force shall, in conjunction with the Agency of Education,
5 make recommendations to end suspensions and expulsions for all but the most
6 serious student behaviors.

7 (b) Membership. The Task Force shall be composed of the Secretary of
8 Education and not more than 20 members appointed by the Secretary of
9 Education, who shall be Vermont residents, and shall be:

- 10 (1) educators in public schools;
11 (2) administrators in public schools;
12 (3) high school students in public schools;
13 (4) special educators in public schools;
14 (5) parents of students in public schools; and
15 (6) members of community groups working in the areas of racial justice
16 and school discipline reform.

17 (c) Membership diversity. The Secretary shall seek, in making
18 appointments to the Task Force, racial diversity in membership.

19 (d) Powers and duties. The Task Force shall, in conjunction with the
20 Agency of Education, make recommendations to end suspensions and

1 expulsions for all but the most serious student behaviors, and shall perform the
2 following tasks:

3 (1) review in-school services and availability of these services in various
4 supervisory unions and regions of the State that are available to support
5 students who would otherwise face exclusionary discipline;

6 (2) recommend additional or more uniform in-school services that
7 should be available to students who would otherwise face exclusionary
8 discipline;

9 (3) define the most serious behaviors that, after considering all other
10 alternatives and supports, should remain eligible for suspension or expulsion;
11 and

12 (4) identify best practice procedures that minimize law enforcement
13 contacts for students facing in-school or exclusionary discipline.

14 (e) Report. On or before November 30, 2021, the Task Force shall submit
15 a written report to the House and Senate Committees on Education with its
16 findings and any recommendations for legislative action.

17 (f) Meetings.

18 (1) The Secretary of Education shall call the first meeting of the Task
19 Force to occur on or before August 1, 2021.

20 (2) The Task Force shall select a chair from among its members at the
21 first meeting.

1 (2) lodged a complaint or testified, assisted, or participated in any
2 manner with the Attorney General, a State’s Attorney, the Department of
3 Labor, the Human Rights Commission, the Equal Employment Opportunity
4 Commission, or any other State or federal agency in an investigation of acts or
5 practices that are prohibited by this chapter;

6 (3) is known by the employer to be about to lodge a complaint or testify,
7 assist, or participate in any manner in an investigation of acts or practices that
8 are prohibited by this chapter;

9 (4) disclosed his or her wages or inquired about or discussed the wages
10 of other employees; or

11 (5) is believed by the employer to have acted as described in
12 subdivisions (A) through (D) of this subdivision.

13 (j)(1) An employer shall not require any employee or prospective
14 employee, as a condition of employment, to sign an agreement or waiver that
15 does either of the following:

16 (A) prohibits, prevents, or otherwise restricts the employee or
17 prospective employee from opposing, disclosing, reporting, or participating in
18 an investigation of an act or practice that is prohibited by this section; or

19 (B) except as otherwise permitted by State or federal law, purports to
20 waive a substantive or procedural right or remedy available to the employee
21 with respect to a claim of a violation of the provisions of this section.

1 (2) Any provision of an agreement that violates subdivision (1) of this
2 subsection shall be void and unenforceable.

3 (k)(1) An agreement to settle a claim of a violation of this section shall not
4 prohibit, prevent, or otherwise restrict the employee from working for the
5 employer or any parent company, subsidiary, division, or affiliate of the
6 employer.

7 (2) An agreement to settle a claim of a violation of this section shall
8 expressly state that:

9 (A) it does not prohibit, prevent, or otherwise restrict the individual
10 who made the claim from doing any of the following:

11 (i) lodging a complaint regarding a violation of this section
12 committed by any person with the Attorney General, a State's Attorney, the
13 Department of Labor, the Human Rights Commission, the Equal Employment
14 Opportunity Commission, or any other State or federal agency;

15 (ii) testifying, assisting, or participating in any manner with an
16 investigation related to a claim of a violation of this section conducted by the
17 Attorney General, a State's Attorney, the Department of Labor, the Human
18 Rights Commission, the Equal Employment Opportunity Commission, or any
19 other State or federal agency;

20 (iii) complying with a valid request for discovery in relation to
21 civil litigation or testifying in a hearing or trial related to a claim of a violation

1 of this section that is conducted by a court, pursuant to an arbitration
2 agreement, or before another appropriate tribunal; or

3 (iv) exercising any right the individual may have pursuant to State
4 or federal labor relations laws to engage in concerted activities with other
5 employees for the purposes of collective bargaining or mutual aid and
6 protection; and

7 (B) it does not waive any rights or claims that may arise after the date
8 the settlement agreement is executed.

9 (3) Any provision of an agreement to settle a claim of a violation of this
10 section that violates subdivision (1) or (2) of this subsection shall be void and
11 unenforceable with respect to the individual who made the claim.

12 (4) Nothing in subdivision (2) of this subsection shall be construed to
13 prevent an agreement to settle a claim of a violation of this section from
14 waiving or releasing the claimant's right to seek or obtain any remedies
15 relating to a violation of this section committed against the claimant by another
16 party to the agreement that occurred before the date on which the agreement is
17 executed.

18 Sec. 2a. 21 V.S.A. § 495h is amended to read:

19 § 495h. SEXUAL HARASSMENT

20 * * *

1 ~~(g)(1) An employer shall not require any employee or prospective~~
2 ~~employee, as a condition of employment, to sign an agreement or waiver that~~
3 ~~does either of the following:~~

4 ~~(A) prohibits, prevents, or otherwise restricts the employee or~~
5 ~~prospective employee from opposing, disclosing, reporting, or participating in~~
6 ~~an investigation of sexual harassment; or~~

7 ~~(B) except as otherwise permitted by State or federal law, purports to~~
8 ~~waive a substantive or procedural right or remedy available to the employee~~
9 ~~with respect to a claim of sexual harassment.~~

10 ~~(2) Any provision of an agreement that violates subdivision (1) of this~~
11 ~~subsection shall be void and unenforceable. [Repealed.]~~

12 ~~(h)(1) An agreement to settle a claim of sexual harassment shall not~~
13 ~~prohibit, prevent, or otherwise restrict the employee from working for the~~
14 ~~employer or any parent company, subsidiary, division, or affiliate of the~~
15 ~~employer.~~

16 ~~(2) An agreement to settle a sexual harassment claim shall expressly~~
17 ~~state that:~~

18 ~~(A) it does not prohibit, prevent, or otherwise restrict the individual~~
19 ~~who made the claim from doing any of the following:~~

20 ~~(i) lodging a complaint of sexual harassment committed by any~~
21 ~~person with the Attorney General, a State's Attorney, the Human Rights~~

1 ~~Commission, the Equal Employment Opportunity Commission, or any other~~
2 ~~State or federal agency;~~

3 ~~(ii) testifying, assisting, or participating in any manner with an~~
4 ~~investigation related to a claim of sexual harassment conducted by the~~
5 ~~Attorney General, a State's Attorney, the Human Rights Commission, the~~
6 ~~Equal Employment Opportunity Commission, or any other State or federal~~
7 ~~agency;~~

8 ~~(iii) complying with a valid request for discovery in relation to~~
9 ~~civil litigation or testifying in a hearing or trial related to a claim of sexual~~
10 ~~harassment that is conducted by a court, pursuant to an arbitration agreement,~~
11 ~~or before another appropriate tribunal; or~~

12 ~~(iv) exercising any right the individual may have pursuant to State~~
13 ~~or federal labor relations laws to engage in concerted activities with other~~
14 ~~employees for the purposes of collective bargaining or mutual aid and~~
15 ~~protection; and~~

16 ~~(B) it does not waive any rights or claims that may arise after the date~~
17 ~~the settlement agreement is executed.~~

18 ~~(3) Any provision of an agreement to settle a sexual harassment claim~~
19 ~~that violates subdivision (1) or (2) of this subsection shall be void and~~
20 ~~unenforceable with respect to the individual who made the claim.~~

1 opportunities given for public comment and the participation in and outcome
2 of that public comment;

3 (2) the final proposed policy;

4 (3) the Council's recommendation for required hours of training on the
5 policy; and

6 (4) a proposed timeline for adoption of the policy by all law
7 enforcement agencies in the State.

8 (b) On or before December 1, 2021, members of the Joint Legislative
9 Justice Oversight Committee shall introduce any resulting proposals in the
10 form of draft legislation for the 2022 legislative session.

11 * * * Judicial Nominating Board; Diversity and Inclusion * * *

12 Sec. 5. 4 V.S.A. § 601 is amended to read:

13 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

14 (a) The Judicial Nominating Board is created for the nomination of
15 Supreme Court Justices, Superior judges, magistrates, and the Chair and
16 members of the Public Utility Commission.

17 (b) The Board shall consist of ~~11~~ nine members who shall be selected as
18 follows:

19 (1) The Governor shall appoint two members who are not attorneys at
20 law.

1 (2) The Senate shall elect ~~three~~ two of its members, not all of whom
2 shall be members of the same party, and only one of whom may be an attorney
3 at law.

4 (3) The House shall elect ~~three~~ two of its members, not all of whom
5 shall be members of the same party, and only one of whom may be an attorney
6 at law.

7 (4) Attorneys at law admitted to practice before the Supreme Court of
8 Vermont, and residing in the State, shall elect ~~three~~ two of their number as
9 members of the Board. The Supreme Court shall regulate the manner of their
10 nomination and election.

11 (5) The Executive Director of Racial Equity.

12 (6) The members of the Board shall serve for terms of two years. All
13 appointments or elections shall be between January 1 and February 1 of each
14 odd-numbered year, except to fill a vacancy. A House vacancy that occurs
15 when the General Assembly is adjourned shall be filled by the Speaker of the
16 House and a Senate vacancy that occurs when the General Assembly is
17 adjourned shall be filled by the Senate Committee on Committees. Members
18 shall serve until their successors are elected or appointed. Members shall serve
19 no more than three consecutive terms in any capacity.

20 ~~(6)~~(7) The members shall elect their own chair, who will serve for a
21 term of two years.

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Sec. 6. 4 V.S.A § 602 is amended to read:

§ 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR
OF THE PUBLIC UTILITY COMMISSION

(a)(1) Prior to submitting to the Governor the names of candidates for Justices of the Supreme Court, Superior Court judges, magistrates, and the Chair of the Public Utility Commission, the Judicial Nominating Board shall submit to the Court Administrator a list of all candidates, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning any candidate.

(2) From the list of candidates, the Judicial Nominating Board shall select by majority vote, provided that a quorum is present, ~~well-qualified~~ qualified candidates for the position to be filled.

(b) Whenever a vacancy occurs in the office of a Supreme Court Justice, a Superior Court judge, magistrate, or Chair of the Public Utility Commission, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the Board shall submit to the Governor the names of as many persons as it deems ~~well~~ qualified to be appointed to the office.

(c)(1) A candidate for judge or Justice shall be a Vermont resident and an experienced lawyer who has practiced law ~~in Vermont~~ for a minimum of ten years, with at least ~~five~~ two years ~~immediately preceding his or her application~~

1 ~~to the Board of practice in Vermont. The Board may make exceptions to the~~
2 ~~five-year requirement for absences from practice for reasons including family,~~
3 ~~military, academic, or medical leave.~~

4 (2) A candidate for magistrate shall be a Vermont resident and an
5 experienced lawyer who has practiced law in Vermont for at least five years
6 immediately preceding his or her application to the Board.

7 (3) A candidate for Chair of the Public Utility Commission shall not be
8 required to be an attorney; however if the candidate is admitted to practice law
9 in Vermont, the Judicial Nominating Board shall submit the candidate's name
10 to the Court Administrator, and he or she shall disclose to the Board
11 information solely about professional disciplinary action taken or pending
12 concerning the candidate. If a candidate is not admitted to practice law in
13 Vermont, but practices a profession requiring licensure, certification, or other
14 professional regulation by the State, the Judicial Nominating Board shall
15 submit the candidate's name to the State professional regulatory entity and that
16 entity shall disclose to the Board any professional disciplinary action taken or
17 pending concerning the candidate.

18 (d) A candidate shall possess the following attributes:

19 (1) Integrity. A candidate shall possess a record and reputation for
20 excellent character and integrity.

1 (2) Legal knowledge and ability. A candidate shall possess a high
2 degree of knowledge of established legal principles and procedures and have
3 demonstrated a high degree of ability to interpret and apply the law to specific
4 factual situations.

5 (3) Judicial temperament. A candidate shall possess an appropriate
6 judicial temperament.

7 (4) Impartiality. A candidate shall exhibit an ability to make judicial
8 determinations in a manner free of bias.

9 (5) Communication capability. A candidate shall possess demonstrated
10 oral and written capacities, with reasonable accommodations, required by the
11 position.

12 (6) Financial integrity. A candidate shall possess demonstrated financial
13 probity.

14 (7) Work ethic. A candidate shall demonstrate diligence.

15 (8) Administrative capabilities. A candidate shall demonstrate
16 management and organizational skills or experience required by the position.

17 (9) ~~Courtroom experience~~ Legal Experience. For Superior Court, a
18 candidate shall have sufficient trial or other comparable experience that
19 ensures knowledge of the ~~Vermont~~ Rules of Evidence and courtroom
20 procedure. For the Environmental Division of the Superior Court, a candidate
21 shall have experience in environmental and zoning law.

1 (3) Sec. 3 (housing; access to credit; working group).

2 (c) The following sections shall take effect on July 1, 2022:

3 (1) Sec. 1a (model curriculum; hate speech; discrimination).

4 (2) Sec. 1c (racial equity policy).