

NO. 41. AN ACT RELATING TO PROHIBITING DISCRIMINATION  
ON THE BASIS OF GENDER IDENTITY.

(S.51)

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

Sec. 1. 1 V.S.A. § 144 is added to read:

§ 144. GENDER IDENTITY

The term “gender identity” means an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender-identity, regardless of the individual’s assigned sex at birth.

Sec. 2. 3 V.S.A. § 961(6) is amended to read:

§ 961. EMPLOYERS

It shall be an unfair labor practice for an employer:

\* \* \*

(6) To discriminate against an employee on account of race, color, creed, religion, age, disability, sex, sexual orientation, gender identity, or national origin.

Sec. 3. 3 V.S.A. § 963(1) is amended to read:

§ 963. MEMBERSHIP; EMPLOYEES’ RIGHTS

An employee organization entering into an agreement shall not:

(1) Discriminate against a person seeking or holding membership therein on account of race, color, creed, religion, age, disability, sex, sexual orientation, gender identity, or national origin.

Sec. 4. 3 V.S.A. § 1001(a) is amended to read:

§ 1001. GRIEVANCES; APPLICANTS AND EXCLUDED PERSONNEL

(a) Persons who are applicants for state employment in the classified service and classified employees in their initial probationary period and any extension or extensions thereof may appeal to the state labor relations board if they believe themselves discriminated against on account of their race, color, creed, religion, disability, sex, sexual orientation, gender identity, age, or national origin.

Sec. 5. 3 V.S.A. § 1013(9) is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

\* \* \*

(9) Rules for personnel administration of employees provided the rules are not discriminatory in regard to an applicant's race, color, creed, sex, sexual orientation, gender identity, age, national origin, religion, or disability.

Sec. 6. 3 V.S.A. § 1026(6) is amended to read:

§ 1026. EMPLOYERS

It shall be an unfair labor practice for an employer:

\* \* \*

(6) To discriminate against an employee on account of race, color, creed, sex, sexual orientation, gender identity, national origin, age, religion, or disability.

Sec. 7. 3 V.S.A. § 1028(1) is amended to read:

§ 1028. MEMBERSHIP; EMPLOYEE RIGHTS

An employee organization entering into an agreement shall not:

(1) Discriminate against a member or applicant for membership on account of race, color, creed, sex, sexual orientation, gender identity, national origin, age, religion, or disability.

Sec. 8. 3 V.S.A. § 1041(a) is amended to read:

§ 1041. GRIEVANCES; APPLICANTS AND EXCLUDED PERSONNEL

(a) An applicant for employment in a position included in the bargaining unit and employees who are in the initial or extended probationary period may appeal to the board if they believe they were discriminated against on account of race, color, creed, sex, sexual orientation, gender identity, age, national origin, religion, or disability.

Sec. 9. 8 V.S.A. § 4724(7) is amended to read:

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR  
DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

\* \* \*

(7) Unfair discrimination; arbitrary underwriting action.

\* \* \*

(B) Making or permitting unfair discrimination against an applicant or an insured, on the basis of the sex, sexual orientation, gender identity, or marital status of the applicant or insured, with regard to:

(i) Underwriting standards and practices or eligibility requirements; or

(ii) Rates; however, nothing in this subdivision shall prevent any person who contracts to insure another from setting rates for such insurance in accordance with reasonable classifications based on relevant actuarial data or actual cost experience in accordance with section 4656 of this title.

(C)(i) Inquiring or investigating, directly or indirectly as to an applicant's, an insured's or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage, or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about

gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation, or gender identity;

(ii) Using sexual orientation, gender identity, or beneficiary designation in the underwriting process or in the determination of insurability;

\* \* \*

Sec. 10. 8 V.S.A. § 10403 is amended to read:

§ 10403. PROHIBITION ON DISCRIMINATION BASED ON SEX,  
MARITAL STATUS, RACE, COLOR, RELIGION, NATIONAL  
ORIGIN, AGE, SEXUAL ORIENTATION, GENDER IDENTITY,  
OR HANDICAPPING CONDITION

(a) No financial institution shall discriminate against any applicant for credit services on the basis of the sex, marital status, race, color, religion, national origin, age, sexual orientation, gender identity, or handicapping condition of the applicant, provided the applicant has the legal capacity to contract.

\* \* \*

Sec. 11. 9 V.S.A. § 2362 is amended to read:

§ 2362. PROHIBITION ON DISCRIMINATION BASED ON SEX,  
SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL  
STATUS, RACE, COLOR, RELIGION, NATIONAL ORIGIN, AGE<sub>2</sub>  
OR HANDICAPPING CONDITION

No seller shall discriminate against any buyer or prospective buyer who desires to establish a retail installment contract because of the sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, age<sub>2</sub> or handicapping condition of the buyer.

Sec. 12. 9 V.S.A. § 2410 is amended to read:

§ 2410. PROHIBITION ON DISCRIMINATION BASED ON SEX,  
SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL  
STATUS, RACE, COLOR, RELIGION, NATIONAL ORIGIN, AGE<sub>2</sub>  
OR HANDICAPPING CONDITION

No seller shall discriminate against any buyer or prospective buyer who desires to establish a retail installment contract or retail charge agreement because of the sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, age<sub>2</sub> or handicapping condition of the buyer.

Sec. 13. 9 V.S.A. § 2488 is amended to read:

§ 2488. PROHIBITION ON DISCRIMINATION BASED ON SEX,  
SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL  
STATUS, RACE, COLOR, RELIGION, NATIONAL ORIGIN, AGE<sub>2</sub>  
OR HANDICAPPING CONDITION

No person shall discriminate against any lessee or prospective lessee who has entered into an agricultural finance lease, or who desires to enter into an agricultural finance lease, because of the sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, age<sub>2</sub> or handicapping condition of the lessee.

Sec. 14. 9 V.S.A. § 4502(a) is amended to read:

§ 4502. PUBLIC ACCOMMODATIONS

(a) An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin, marital status, sex ~~or~~<sub>2</sub> sexual orientation, or gender identity of any person<sub>2</sub> refuse, withhold from<sub>2</sub> or deny to that person any of the accommodations, advantages, facilities<sub>2</sub> and privileges of the place of public accommodation.

Sec. 15. 9 V.S.A. § 4503(a) is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin<sub>2</sub> or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(2) To discriminate against, or to harass any person in the terms, conditions<sub>2</sub> or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin<sub>2</sub> or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(3) To make, print<sub>2</sub> or publish, or cause to be made, printed<sub>2</sub> or published any notice, statement<sub>2</sub> or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation<sub>2</sub> or discrimination based on race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin<sub>2</sub> or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(4) To represent to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national



origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, that any dwelling or other real estate is not available for inspection, sale, or rental when the dwelling or real estate is in fact so available.

\* \* \*

(6) To discriminate against any person in the making or purchasing of loans or providing other financial assistance for real estate related transactions or in the selling, brokering, or appraising of residential real property, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(7) To engage in blockbusting practices, for profit, which may include inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(8) To deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service,

organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation, on account of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person is a recipient of public assistance.

\* \* \*

Sec. 16. 10 V.S.A. § 601(11) is amended to read:

§ 601. DEFINITIONS

The following words and terms, unless the context clearly indicates a different meaning, shall have the following meaning:

\* \* \*

(11) “Persons and families of low and moderate income” means persons and families irrespective of race, creed, national origin, sex ~~or~~ sexual orientation, or gender identity deemed by the agency to require such assistance as is made available by this chapter on account of insufficient personal or family income, taking into consideration, without limitation, such factors as:

\* \* \*

Sec. 17. 16 V.S.A. § 11(a)(26) is amended to read:

§ 11. CLASSIFICATIONS AND DEFINITIONS

\* \* \*

(26)(A) “Harassment” means an incident or incidents of verbal, written, visual, or physical conduct based on or motivated by a student’s or a student’s

family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

(B) "Harassment" includes conduct which violates subdivision (A) of this subdivision (26) and constitutes one or more of the following:

\* \* \*

(iii) Harassment of members of other protected categories, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived creed, national origin, marital status, sex, sexual orientation, gender identity, or disability and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

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

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion,

national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

(1) For any employer, employment agency, or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual;

(2) For any person seeking employees or for any employment agency or labor organization to cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability;

(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual;

(4) For any labor organization, because of race, color, religion ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age to discriminate against any individual or against a qualified disabled individual or to limit, segregate or qualify its membership;

\* \* \*

(e) The provisions of this section prohibiting discrimination on the basis of sexual orientation and gender identity shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment which is calculated by the organization to promote the religious principles for which it is established or maintained.

(f) The provisions of this section prohibiting discrimination on the basis of sexual orientation or gender identity shall not be construed to change the definition of family or dependent in an employee benefit plan.

(g) Notwithstanding any provision of this subchapter, an employer shall not be prohibited from establishing and enforcing reasonable workplace policies to address matters related to employees' gender identity, including permitting an employer to establish a reasonable dress code for the workplace.

#### Sec. 18a. LEGISLATIVE INTENT

(a) It is the intent of the general assembly that 21 V.S.A. § 495(g) shall not be used as a pretext for an employer to enact workplace policies that deny an individual the protections afforded under this subchapter.

(b) It is the intent of the general assembly that this act shall not require the offer of or coverage for additional health benefits under any insurance policy

or certificate, subscriber contract, or employee health benefit plan. This act shall not be interpreted to reduce any rights to health benefits that may be available under other law.

Sec. 19. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

\* \* \*

(7) To discriminate against an employee on account of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, age<sub>2</sub> or disability.

\* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents:

\* \* \*

(8) Compulsory membership; employees' rights. A labor organization entering into an agreement requiring a person's membership therein as a condition of employment by the employer shall not:

(A) discriminate against a person seeking or holding membership therein on account of race, color, disability, religion, creed, sex, sexual orientation, gender identity, age<sub>2</sub> or national origin.

(B) penalize a member for exercising a right guaranteed by the Constitution or laws of the United States or the state of Vermont;

(C) cause the discharge from employment of employees who refuse membership therein because of religious beliefs.

\* \* \*

Sec. 20. 21 V.S.A. § 1726(a)(7) is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

\* \* \*

(7) To discriminate against an employee on account of race, color, religion, creed, sex, sexual orientation, gender identity, national origin, disability, age, or political affiliation.

Sec. 21. STUDENT HARASSMENT PREVENTION POLICIES

(a) The commissioner of education shall revise the model policy on prevention of harassment of students to reference the term “gender identity” and to provide the revised model policy to each school board in Vermont on or before August 1, 2007.

(b) Notwithstanding 16 V.S.A. § 565(b) that requires each school board to adopt harassment prevention policies that are “at least as stringent as model policies developed by the commissioner,” school boards are not required to amend harassment prevention policies to reference the term “gender identity” until August 1, 2009.

Approved: May 22, 2007