

# The Vermont Statutes Online

## Title 9: Commerce and Trade

### *Chapter 139: DISCRIMINATION; PUBLIC ACCOMMODATIONS; RENTAL AND SALE OF REAL ESTATE*

#### § 4500. Legislative intent

(a) The provisions of this chapter establishing legal standards, duties and requirements with respect to persons with disabilities in places of public accommodation as defined herein, except those provisions relating to remedies, are intended to implement and to be construed so as to be consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and rules adopted thereunder, and are not intended to impose additional or higher standards, duties or requirements than that act.

(b) Subsections 4502(b) and (c) of Title 9 shall not be construed to create or impose on governmental entities additional or higher standards, duties or requirements than that imposed by Title II of the Americans with Disabilities Act. (Added 1991, No. 243 (Adj. Sess.), § 5.)

#### § 4501. Definitions

As used in this chapter:

(1) "Place of public accommodation" means any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.

(2) "Handicap" or "disability," with respect to an individual, means:

(A) a physical or mental impairment which limits one or more major life activities;

(B) a history or record of such an impairment; or

(C) being regarded as having such an impairment.

(3) "Physical or mental impairment" means:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(C) The term "physical or mental impairment" includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism. A handicapped individual does not include any individual who is an alcoholic or drug abuser who, by

reason of current alcohol or drug use, constitutes a direct threat to property or safety of others.

(4) "Owner" includes any person having a legal or beneficial interest in real estate which gives him or her the right to possession thereof.

(5) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(6) "Public assistance" includes any assistance provided by federal, state or local government, including medical and housing assistance.

(7) "Auxiliary aids and services" mean the following:

(A) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, hearing aid compatible telephones, closed caption decoders, open and closed captioning telecommunications devices for deaf persons, videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

(B) Qualified readers, taped texts, audio recordings, Braille materials, large print materials or other effective methods of making visually delivered materials available to individuals with visual impairments.

(C) Modification of equipment or devices.

(D) Other similar services and actions.

(8) "Public accommodation" means an individual, organization, governmental or other entity that owns, leases, leases to or operates a place of public accommodation.

(9) "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, the factors considered in determining whether an action is an undue burden pursuant to subsection (10) of this section apply.

(10) "Undue burden" means significant difficulty or expense. In determining whether an action would result in an undue burden, the following factors shall be considered:

(A) The nature and cost of the action needed.

(B) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures, or any other impact of the action on the operation of the site.

(C) The geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity.

(D) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; and the number, type and location of its facilities.

(E) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure and functions of the workforce of the parent corporation or entity. (Added 1987, No. 74, § 1; amended 1987, No. 253 (Adj. Sess.), § 1; 1989, No. 89, § 1; 1991, No. 243 (Adj. Sess.), §§ 1, 2.)

#### § 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, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation.

(b) An owner or operator of a place of public accommodation or his or her employee or agent shall not prohibit from entering a place of public accommodation:

(1) An individual with a disability accompanied by a service animal.

(2) An individual who is training an animal to perform as a service animal for an individual with a disability.

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

(1) A public accommodation shall provide an individual with a disability the opportunity to participate in its services, facilities, privileges, advantages, benefits, and accommodations. It is discriminatory to offer an individual an unequal opportunity or separate benefit; however it is permissible to provide a separate benefit if that benefit is necessary to provide an individual or class of individuals an opportunity that is as effective as that provided to others.

(2) A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting which is appropriate for the needs of the individual. Notwithstanding the existence of separate or different programs or activities, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different. Nothing in this subsection shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which the individual chooses not to accept.

(3) A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(4) Repealed.]

(5) A public accommodation shall make reasonable modifications in policies, practices, or procedures when those modifications are necessary to offer goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the

public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(6) A public accommodation shall take whatever steps may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden on the public accommodation.

(7) A public accommodation shall not be required to provide to individuals with disabilities personal devices, such as wheelchairs, eyeglasses, hearing aids or readers for personal use or study, or personal services to assist with feeding, toileting, or dressing.

(8) Notwithstanding the provisions of this section, if a place of public accommodation has an architectural or communication barrier, in order to comply with this section, the public accommodation shall remove the barrier, if removal is readily achievable, or shall make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those alternative methods are readily achievable. Nothing in this subsection shall be construed to alter architectural barrier removal requirements under the federal Americans with Disabilities Act and its regulations as they relate to governmental entities.

(9) Any public accommodation that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(d) This section shall not prohibit an owner or operator of an inn, hotel, motel, or other establishment which provides lodging to transient guests, and which has five or fewer rooms for rent or hire, from restricting such accommodation on the basis of sex or marital status.

(e) It is a violation of this section for a gas station or other facility which sells gasoline or other motor vehicle fuel for sale to the public to fail to comply with the provisions of section 4110a of this title.

(f) It is a violation of this section for a public accommodation to fail to comply with the provisions or rules pertaining to public buildings pursuant to 21 V.S.A. chapter 4.

(g) This chapter shall not apply to:

(1) Special education claims and issues covered by federal and State special education laws, regulations, and procedures, pursuant to 20 U.S.C. § 1404 et seq. and 16 V.S.A. chapter 101.

(2) An insurer underwriting risks, classifying risks, or administering risks that are based on or are not inconsistent with 8 V.S.A. §§ 4724 and 4084 or other applicable State laws.

(h) This section shall not be construed to require a public accommodation to permit an individual to participate in or benefit from the services, facilities, goods, privileges, advantages, and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others. For the purposes of this subsection, "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation shall make an individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain:

(1) the nature, duration, and severity of the risk; and

(2) the probability that the potential injury will actually occur; and

(3) whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(i) Nothing in this section shall be construed to prohibit a public accommodation from excluding a person engaged in disruptive behavior which the place of public accommodation has reason to believe is the result of alcohol or illegal drug use.

(j) Notwithstanding any other provision of law, a mother may breastfeed her child in any place of public accommodation in which the mother and child would otherwise have a legal right to be.

(k) A police officer, a firefighter, or a member of a rescue squad, search and rescue squad, first response team, or ambulance corps who is accompanied by a service dog shall be permitted in any place of public accommodation, and the service dog shall be permitted to stay with its master. For the purposes of this subsection, "service dog" means a dog owned, used, or in training by any police or fire department, rescue, or first response squad, ambulance corps, or search and rescue organization for the purposes of locating criminals and lost persons, or detecting illegal substances, explosives, cadavers, accelerants, or school or correctional facility contraband.

(l) Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage or celebration of a marriage. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this subsection shall not create any civil claim or cause of action. This subsection shall not be construed to limit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from selectively providing services, accommodations, advantages, facilities, goods, or privileges to some individuals with respect to the solemnization or celebration of a marriage but not to others. (Added 1987, No. 74, § 1; amended 1991, No. 48, § 3; 1991, No. 135 (Adj. Sess.), § 11; 1991, No. 243 (Adj. Sess.), §§ 3, 4; 2001, No. 117 (Adj. Sess.), § 2, eff. May 28,

2002; 2003, No. 17, §§ 1, 2; 2007, No. 41, § 14; 2009, No. 3, § 11, eff. Sept. 1, 2009; 2013, No. 31, § 10.)

§ 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, 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, 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, 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, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation, or discrimination based on 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.

(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.

(5) Repealed.]

(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.

(9) To discriminate in the sale or rental of a dwelling because a person relies upon aids such as attendants, specially trained animals, wheelchairs, or similar appliances or devices but the owner shall not be required to modify or alter the building in any way in order to comply with this chapter. An owner shall permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications are necessary to afford the person full enjoyment of the premises. The owner may, if reasonable, require the person to agree to restore the premises to the condition that existed before the modification, reasonable wear and tear excepted, but the owner may not require an additional security deposit for this purpose.

(10) To refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in 20 V.S.A. § 2900(4) and pursuant to 20 V.S.A. chapter 174.

(12) To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or because of the receipt of public assistance, except as otherwise provided by law.

(b) The provisions of subsection (a) of this section with respect to discrimination in sales and rentals of dwellings on the basis of age or on the basis of a person's intention to occupy with one or more minor children shall not apply to the sale or rental of a dwelling in a housing complex:

(1) intended for, and solely occupied by, persons 62 years of age or older; or

(2) intended and operated for occupancy by at least one person 55 years of age or older per unit. This subsection shall only apply if the following conditions are met:

(A) The housing complex has significant facilities and services specifically designed to meet the physical or social needs of older persons, or if it is not practicable to provide those facilities and services, that the housing complex is necessary to provide important housing opportunities for older persons; and

(B) At least 80 percent of the units are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing complex in which first occupancy will begin after enactment of this act need not comply with this subsection until 25 percent of the units are occupied; and

(C) There are written and enforced policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) established under any federal or State program specifically designed and operated to assist elderly persons, as defined in the federal or State program.

(c) The housing exemption in subsection (b) of this section shall not fail to apply due to persons residing in such dwellings as of July 1, 1989, who do not meet the age requirements of subsection (b) of this section, provided that new occupants of such dwellings meet the age requirements of that subsection, and that unoccupied units as of July 1, 1989 are reserved for occupancy by persons who meet the age requirements of that subsection. (Added 1987, No. 74, § 1; amended 1987, No. 253 (Adj. Sess.), § 2; 1989, No. 89, § 2; 1991, No. 135 (Adj. Sess.), § 12; 2007, No. 41, § 15; 2011, No. 137 (Adj. Sess.), § 6, eff. May 14, 2012; 2013, No. 31, § 11.)

#### § 4504. Rental of housing; exemptions

The provisions of section 4503 of this title relating to the rental of a dwelling shall not apply:

(1) if the dwelling unit is inadequate, under applicable laws and ordinances relating to occupancy, to house all persons who intend to live there;

(2) if the dwelling unit is in a building with three or fewer units and the owner or a member of the owner's immediate family resides in one of the units, provided any notice, statement, or advertisement with respect to the unit complies with subdivision 4503(a)(3) of this title;

(3) to the refusal to rent to a person because the person is under the age of majority;

(4) to limit a landlord's right to establish and enforce legitimate business practices necessary to protect and manage the rental property, such as the use of references. However, this subdivision shall not be used as a pretext for discrimination in violation of this section; or

(5) to a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in that religion is restricted on the basis of race, color, or national origin. The religious restriction or preference must be stated in written policies and procedures of the religious organization, association, or society. (Added 1987, No. 74, § 1; amended 1987, No. 253 (Adj. Sess.), § 3; 1989, No. 89, § 3; 2013, No. 50, § E.236.)

§ 4505. Repealed. 1987, No. 253 (Adj. Sess.), § 5.

#### § 4506. Enforcement; civil action; retaliation prohibited

(a) A person aggrieved by a violation of this chapter may file a charge of discrimination with the Human Rights Commission pursuant to chapter 141 of this title or may bring an action for injunctive relief and compensatory and punitive damages and any other

appropriate relief in the Superior Court of the county in which the violation is alleged to have occurred.

(b) The Court may award costs and reasonable attorney's fees to an aggrieved person who prevails in an action brought under subsection (a) of this section.

(c) The Human Rights Commission may bring an action in the name of the Commission to enforce the provisions of this chapter in accordance with its powers established in chapter 141 of this title.

(d) The initiation or completion of an investigation by the Human Rights Commission shall not be a condition precedent to the filing of any lawsuit for violation of this chapter.

(e) Retaliation prohibited. A person shall not discriminate against any individual because that individual:

(1) has opposed any act or practice that is prohibited under section 4502 or 4503 of this title;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by chapter 139 of this title;

(3) is known by the person to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of acts or practices prohibited by chapter 139 of this title; or

(4) is believed by the person to have acted as described in subdivisions (1) through (3) of this subsection. (Added 1987, No. 74, § 1; amended 1987, No. 253 (Adj. Sess.), § 4; 1989, No. 89, § 4; 2013, No. 31, § 12.)

#### § 4507. Criminal penalty

A person who violates a provision of this chapter shall be fined not more than \$1,000.00. (Added 1987, No. 74, § 1.)

§ 4508. Repealed. 1989, No. 89, § 10.

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