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MEMO

TO: Helen Head, Chair- Committee on General, House and Military Affairs  
FROM: Karen Richards, Executive Director- Human Rights Commission  
RE: Proposed Amendment to 9 V.S.A. §4506(e)  
DATE: January 28, 2015

In 2013, the Vermont Fair Housing and Public Accommodations (VFHPAA) statute was amended to provide a consistent definition of "retaliation." The public accommodations portion of the statute, 9 V.S.A. §4502(c)(4) had a section prohibiting discrimination based on filing a charge or engaging in protected activity. The fair housing section, consistent with federal law, prohibited "coercing, intimidating, threatening or interfering... in the exercise of rights or for having filed a charge. 9 V.S.A. §4503(a)(5)."

The solution was to eliminate both of the above sections and replace them with a single section, 4506(e), prohibiting retaliation. However, when the amendment to the VFHPAA occurred, it lost the language of both previous sections (public accommodations and fair housing) concerning "coercion, intimidation, threatening or interfering with any person in the enjoyment of any right granted or protected" by the VFHPAA. The language now reads:

§4506(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 subsection (1) through (3) of this subsection.

We have since encountered situations where that would have been considered retaliation under the previous language can no longer be charged as such because of the loss of the original language. By way of example, if a person requests a reasonable accommodation based on disability and a landlord then retaliates in some manner (starts an eviction, harasses, etc.), that would not be covered under the current language because the tenant has not "opposed an act or practice" but rather has asserted an affirmative right that is granted and protected by law. In addition, the original language was taken from the federal Fair Housing Act and is required language in order for Vermont to remain "substantially equivalent" and continue to receive federal funds for investigation of complaints.

To fix this, the VHRC proposes an amendment of the statute as follows:

§4506(e) **Retaliation prohibited.** A person shall not coerce, threaten, interfere or otherwise discriminate against any individual ~~because that individual:~~

- (1) in the exercise or enjoyment of any right granted or protected by this Chapter; or
- (2) who has opposed any act or practice that is prohibited under section 4502 or 4503 of this title; or
- (3) who has lodged a complaint or has testified, assisted, participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by chapter 139 of this title; or
- (4) who 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
- (5) who is believed by the person to have acted as described in subsection (1) through ~~(3)-(4)~~ of this subsection.