

AMENDMENT TO RULES COMMITTEE PRINT

118-3

OFFERED BY MS. BALINT OF VERMONT

Strike the entire text, and insert the following:

1 **SECTION 1. AMENDMENTS TO TITLE IX OF THE EDUCATION**

2 **AMENDMENTS OF 1972.**

3 Title IX of the Education Amendments of 1972 (20
4 U.S.C. 1681 et seq.) is amended—

5 (1) in section 901, by adding at end the fol-
6 lowing:

7 “(d) LIABILITY FOR SEX-BASED HARASSMENT.—

8 “(1) HARASSMENT BY AGENTS, EMPLOYEES,
9 AND OTHER PERSONS AUTHORIZED BY THE RECIPI-
10 ENT TO PROVIDE AID, BENEFIT, OR SERVICE.—Sub-
11 ject to subsection (e), a recipient shall be liable if its
12 agent, employee, or other person authorized by the
13 recipient to provide aid, benefit, or service under the
14 recipient’s program or activity, engages in sex-based
15 harassment against a person who participates in or
16 receives any benefit, service, or opportunity from
17 such program or activity, or who attempts to receive
18 such benefit, service, or opportunity, regardless of
19 where the harassment occurs, if—

1 “(A) the harassment is enabled or assisted
2 by the authority exercised as an agent, em-
3 ployee, or other authorized person of the recipi-
4 ent; or

5 “(B) the recipient receives notice of the
6 harassment.

7 “(2) HARASSMENT BY NON-AGENTS, NON-EM-
8 PLOYEES, AND OTHER NON-AUTHORIZED PER-
9 SONS.—Subject to subsection (e), a recipient is liable
10 for sex-based harassment if a person who is not its
11 agent, employee, or other authorized person, engages
12 in sex-based harassment against a person who is
13 participating in or receiving any benefit, service, or
14 opportunity from such program or activity, or who
15 is attempting to do so, regardless of where the har-
16 assment occurs, if the recipient receives notice of the
17 harassment.

18 “(e) AFFIRMATIVE DEFENSE.—

19 “(1) IN GENERAL.—A recipient is not liable in
20 a private action for damages under subsection (d)
21 for sex-based harassment, if the recipient dem-
22 onstrates that it exercised reasonable care to prevent
23 sex-based harassment and to promptly remedy the
24 effects of the sex-based harassment at issue, includ-

1 ing through a demonstration by the recipient that
2 it—

3 “(A) established, adequately publicized,
4 and enforced an effective and comprehensive
5 sex-based harassment prevention policy, train-
6 ing, and complaint procedure that is likely to
7 provide redress and to avoid harm without ex-
8 posing the person subjected to such harassment
9 to undue risk, effort, or expense;

10 “(B) if requested by an aggrieved person
11 subjected to sex-based harassment (or the par-
12 ent or guardian of such person, if such person
13 is a minor), or otherwise necessary to protect
14 such person or other persons in such program
15 or activity from a significant ongoing threat of
16 harm, undertook a prompt, thorough, and im-
17 partial investigation of such harassment;

18 “(C) provided supportive measures that
19 have the purpose and effect of preserving and
20 restoring a person subjected to sex-based har-
21 assment’s equal access to the recipient’s edu-
22 cation program or activity, regardless of wheth-
23 er such person requests an investigation; and

1 “(D) took other necessary, immediate, and
2 appropriate corrective action designed to stop
3 such harassment and remedy its effects.

4 “(2) NOT ESTABLISHING REASONABLE CARE.—
5 A showing that the harassment did not recur after
6 the recipient received notice of the harassment does
7 not establish reasonable care absent the demonstra-
8 tion required by subparagraphs (A) through (D) of
9 paragraph (1).

10 “(f) NOTICE.—A recipient receives notice of sex-
11 based harassment if an agent, employee, or other author-
12 ized person of the recipient, or in the exercise of reason-
13 able care should have known, about the harassment and—

14 “(1) has the authority to take action to redress
15 the harassment;

16 “(2) has the responsibility to report to an ad-
17 ministrator harassment or similar misconduct by
18 others; or

19 “(3) receives a report of such harassment from
20 an individual who could reasonably believe that the
21 agent, employee, or other authorized person is as de-
22 scribed in paragraph (1) or (2).”;

23 (2) in section 903—

24 (A) in the 1st sentence by inserting “(a)”
25 before “Any”; and

1 (B) by adding at the end of the following:

2 “(b) Any person aggrieved by the failure of a recipi-
3 ent to comply with section 901, or a rule issued under
4 this title, may bring a civil action in any court of com-
5 petent jurisdiction.

6 “(c) In a civil action brought for a violation of section
7 901 by or on behalf of a person aggrieved by a violation
8 of section 901, such person may recover equitable and
9 legal relief (such as compensatory damages, including for
10 emotional distress, and punitive damages), and attorney’s
11 fees (including expert fees).”; and

12 (3) by inserting after section 908 the following:

13 **“SEC. 908A. DEFINITIONS.**

14 “For purposes of this title—

15 “(1) the term ‘gender identity’—

16 “(A) means a person’s internal sense of
17 gender, which could be female, male, or another
18 gender;

19 “(B) includes a person’s gender expression,
20 which is how they present their gender identity
21 outwardly, including through appearance, man-
22 nerisms, dress, or other gender-related charac-
23 teristics; and

24 “(C) may or may not match their des-
25 ignated sex at birth;

1 “(2) the term ‘on the basis of sex’ includes,
2 inter alia, on the basis of, perceived or actual—

3 “(A) sex stereotypes;

4 “(B) pregnancy or related conditions, in-
5 cluding—

6 “(i) childbirth, termination of preg-
7 nancy, or lactation;

8 “(ii) medical conditions related to
9 pregnancy, childbirth, termination of preg-
10 nancy, or lactation; or

11 “(iii) recovery from pregnancy, child-
12 birth, termination of pregnancy, lactation,
13 or their related medical conditions;

14 “(C) sexual orientation;

15 “(D) gender identity; or

16 “(E) sex characteristics, including inter-sex
17 traits;

18 “(3) the term ‘recipient’ means an entity de-
19 scribed in any of paragraphs (1) through (4) of sec-
20 tion 908 and includes any entity that exercises con-
21 trolling authority over such recipient;

22 “(4) the term ‘sex-based harassment’—

23 “(A) means conduct on the basis of sex, in-
24 cluding conduct of a sexual nature, that unrea-
25 sonably alters a person’s ability to participate

1 in or receive any benefit, service, or opportunity
2 from an education program or activity that re-
3 ceives Federal financial assistance, including by
4 creating an intimidating, hostile, or offensive
5 environment; and

6 “(B) includes an employee, agent, or other
7 person authorized by the recipient to provide an
8 aid, benefit, or service under the recipient’s
9 education program or activity, explicitly or
10 impliedly conditioning the provision of such an
11 aid, benefit, or service on a person’s participa-
12 tion in sexual conduct; and

13 “(5) the term ‘sexual orientation’ includes ho-
14 mosexuality, heterosexuality, bisexuality,
15 pansexuality, and asexuality.”.

