



H1: An Act Relating to Agreements Not to Compete
House Committee on Commerce and Economic Development

Charles Martin, Government Affairs Director
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The Vermont Chamber represents thousands of members from all industries and sectors of Vermont's business community. Informed by routine engagement with our diverse membership, the Vermont Chamber maintains a knowledgeable perspective on issues impacting Vermont's employers and employees.

We remain deeply appreciative of the Committee's willingness to include representatives of our community in an ongoing, cordial discussion regarding the use of non-compete agreements in Vermont. These agreements aid in the protection of propriety and confidential information, intellectual property, and customer relationships. This is particularly true for small businesses who often face fierce business and workforce recruitment competition from larger national and international companies. Small businesses often also lack the capacity to maintain full-time counsel, making the use of pre-employment contracts necessary for the meaningful protection of their legal interests.

We acknowledge that the unrestricted use of non-compete agreements in employment contracts could potentially result in inequitable circumstances for employees. This is why we are pleased that Vermont courts seem to enforce these agreements and other restrictive covenants only to the extent that such agreements protect an employer's legitimate business interests and do not prevent a former employee from earning a living.

Considering the ample legal protections that currently exist under common law, we are ultimately supportive of the continued use of non-compete agreements in their current form. That said, if the Committee chooses to advance H1 further, we offer the following recommendation:

- Remove mention of Garden Leave and its associated definition and retain language – [Sec.(2)(A)19-20], that provides greater flexibility for both parties to a potential non-compete agreement. Section (2)(A), lines 19-20, beginning at "consideration" and ending at "agreement" appropriately satisfies the intent of accounting for the needs of both the employee, who can use this opportunity to bargain for more lucrative consideration, and the employer who at this juncture would be able to either meet the needs of the potential employee or choose to review other applicants.

The Vermont Chamber fully recognizes the importance of ensuring businesses, particularly small businesses, possess the tools necessary to protect proprietary information. We hope the Committee is receptive to our concerns and look forward to remaining a resource as this conversation develops.