



Vermont Technology Alliance
The Voice for Technology in Vermont

**Testimony to the House Commerce and Economic Development Committee
Feb. 13 on H.1, an act relating to agreements not to compete.**

Thank you for the opportunity to provide input on bill H.1, an act relating to agreements not to compete.

The Vermont Technology Alliance (vtTA) is a non-profit business association with a mission to support, promote, and grow technology jobs and technology businesses in Vermont. We have more than 200 members from throughout the state representing a range of tech areas, including software, IT, manufacturing, telecommunications, energy, and others.

Many of our members are concerned about the overly restrictive application of non-compete agreements. The primary concern is if they are used as a way to keep employees from leaving a business, or to prevent them from moving from one job to another.

On the other hand, we have other members who believe they are necessary to protect the loss of competitive information, or of employees taking unfair advantage of contacts and knowledge gained from the employer. This can include ensuring employees do not take proprietary information or clients from the employer to a competitor, or to use in starting a new business.

Most Vermont tech businesses are supportive of employees moving on in their careers, but there are also some legitimate concerns about employees taking knowledge with them and using it to directly compete with the business. The goal is to strike the right balance between both – do not restrict employee career mobility, while ensuring that businesses can prevent the loss of competitive information.

While we support an effort to prevent the abuse of non-competition agreements, we are concerned that an outright ban could present problems for companies that use them appropriately.

A couple of recent reasons for using non-compete agreements from Vermont Technology Alliance members include a software company that has a unique product offering for its business sector, and requires a one-year non-compete agreement with a direct competitor. Another is a firm that had a recent instance of an employee soliciting a customer for a job that would replace the businesses' contract with the customer.

Another concern is investors who use a non-compete agreements with founders and employees. If these individuals are able to leave and go work for a competitor, or form a competing company, it would harm the investor. Not allowing for any non-compete agreements, could potentially hinder investment in Vermont start-ups.

While there and have been cases of businesses using non-competes to prevent employees from leaving in the tech industry, I am not aware of any specific examples of complaints or abuses around the use of non-competition agreements in Vermont.

The standard for judging non-compete clauses in Vermont is that the agreement must be reasonable in time and in scope. Areas where clearer rules may be appropriate could be to define what is reasonable. This could potentially include limitations on length of time for the agreement, the geographic area involved, and the skill, knowledge and role of the employee.

In conclusion, we recommend that the committee look at those specific instances where non-compete agreements have been unfair to employees and address those areas specifically, instead of banning non-compete agreements outright.

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