

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 1 entitled “An act relating to agreements not to
4 compete” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. 21 V.S.A. § 495o is added to read:

8 § 495o. AGREEMENTS NOT TO COMPETE; PROHIBITION;

9 EXCEPTIONS

10 (a) Except as otherwise provided by this section, an agreement not to
11 compete or any other agreement that restrains an individual from engaging in a
12 lawful profession, trade, or business is prohibited.

13 (b) Notwithstanding subsection (a) of this section, a person may enter into
14 an agreement not to compete with a business entity or a similar agreement that
15 restrains the person from engaging in a lawful profession, trade, or business
16 within a specified geographic area in which the business entity carries on its
17 business under the following circumstances:

18 (1) Sale of a business or interest in a business. A person may enter into
19 an agreement not to compete in relation to:

20 (A) with respect to a business entity, the sale of:

1 (i) all or substantially all of the person’s ownership interest in the
2 business entity or its operating assets; or

3 (ii) all or substantially all of the person’s ownership interest in a
4 subsidiary or division of the business entity or the operating assets of a
5 subsidiary or division of the business entity;

6 (B) with respect to a partnership in which the person is a partner, the
7 dissolution of the partnership or the dissociation of the person from the
8 partnership; or

9 (C) with respect to a limited liability company in which the person is
10 a member, the dissolution of the limited liability company or the termination of
11 the person’s interest in the limited liability company.

12 (2) Agreements supported by consideration. An employee may enter
13 into an agreement not to compete with a business entity at the commencement
14 of employment or in relation to a promotion or a substantial change in the
15 employee’s job responsibilities if the agreement satisfies all of the following
16 requirements:

17 (A) The agreement is supported by garden leave, a nonqualified
18 deferred compensation plan funded solely by the employer, or other similar
19 consideration that is mutually agreed to by the employer and employee and is
20 specified in the agreement.

1 (B) The agreement is in writing and signed by the employer and the
2 employee.

3 (C)(i) If the agreement is entered into in relation to the
4 commencement of employment, it is provided to the employee with the formal
5 offer of employment or 10 days before the commencement of employment,
6 whichever is earlier; or

7 (ii) if the agreement is entered into in relation to a promotion or a
8 substantial change in the employee’s job responsibilities, it is provided to the
9 employee at least 10 days before it will take effect.

10 (D) The agreement states that the employee has the right to consult
11 with an attorney prior to signing the agreement.

12 (E) The limitations set forth in the agreement are reasonable in time,
13 geographical area, and the scope of activity to be restrained.

14 (c)(1) Nothing in this section shall be construed to prohibit an agreement
15 that prohibits the disclosure of trade secrets as defined in 9 V.S.A. § 4601 or a
16 nondisclosure agreement that protects confidential business information that
17 does not constitute a trade secret.

18 (2) Nothing in this section shall be construed to prohibit a
19 nonsolicitation agreement between an employer and an employee provided that
20 the limitations set forth in the agreement are reasonable in time, geographical
21 area, and the scope of activity to be restrained.

1 (d) Any provision of an employment contract or other agreement entered
2 into on or after July 1, 2019 that violates the provisions of this section shall be
3 void and unenforceable.

4 (e) As used in this section:

5 (1) “Business entity” includes any partnership, limited liability
6 company, corporation, cooperative, or mutual benefit enterprise.

7 (2) “Garden leave” means a provision in a noncompete agreement
8 pursuant to which an employer agrees to pay an employee on a pro rata basis
9 during the term of the agreement an amount equal to at least 50 percent of the
10 employee’s highest annualized base salary during the two years prior to his or
11 her termination of employment with the employer.

12 (3) “Nonsolicitation agreement” means an agreement between an
13 employer and an employee pursuant to which the employee agrees not to:

14 (A) solicit or recruit the employer’s employees; or

15 (B) solicit or transact business with customers or clients of the
16 employer who were customers or clients while the employee was employed by
17 the employer.

18 Sec. 2. EFFECTIVE DATE

19 This act shall take effect on July 1, 2019 and shall apply to agreements
20 entered into on or after that date.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE

DRAFT