

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, agreements not to
11 compete are prohibited.

12 (b) Notwithstanding subsection (a) of this section, a person may enter into
13 an agreement not to compete under the following circumstances:

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

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

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

19 (ii) all or substantially all of the person’s ownership interest in a
20 subsidiary or division of the business entity or the operating assets of a
21 subsidiary or division of the business entity;

1 (B) with respect to a partnership in which the person is a partner, the
2 dissolution of the partnership or the dissociation of the person from the
3 partnership; or

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

7 (2) Agreements supported by consideration. A key employee may enter
8 into an agreement not to compete with a business entity at the commencement
9 of employment or in relation to a promotion or a substantial change in the
10 employee’s job responsibilities if the agreement satisfies all of the following
11 requirements:

12 (A)(i) If the agreement is in relation to a promotion or a substantial
13 change in the employee’s job responsibilities:

14 (I) the employee receives additional compensation in relation to
15 the promotion or substantial change in the employee’s job responsibilities; and

16 (II) the agreement not to compete is supported by substantial
17 consideration that is specified in the agreement.

18 (ii) If the agreement is in relation to the commencement of
19 employment, the agreement not to compete is supported by substantial
20 consideration that is 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)(i) The agreement states that the employee has the right to consult
11 with an attorney prior to signing the agreement and that the employer shall
12 reimburse the employee for the cost of consulting with an attorney for the
13 purpose of reviewing the agreement and obtaining legal advice.

14 (ii) The agreement shall, at a minimum, provide that the employer
15 shall reimburse the employee for a period of up to two hours of attorney **time.**

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

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

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

5 (d) Any provision of an employment contract or other agreement entered
6 into on or after July 1, 2020 that violates the provisions of this section shall be
7 void and unenforceable.

8 (e) As used in this section:

9 (1) “Agreement not to compete” means any agreement between a person
10 and a business entity that restrains the person from engaging in a lawful
11 profession, trade, or business within a specified geographic area in which the
12 business entity carries on its business.

13 (2) “Business entity” includes any partnership, limited liability
14 company, corporation, cooperative, or mutual benefit enterprise.

15 (3) “Executive , professional, or administrative employee” means an
16 employee who is exempt from the wage and hour provisions of the Fair Labor
17 Standards Act pursuant to 29 U.S.C. § 213(a)(1) and is employed in a bona
18 fide executive, administrative, or professional capacity, as defined pursuant
19 29 C.F.R. Part 541.

20 (4) “Key employee” means an employee who:

21 (A) is an executive, professional, or administrative employee; and

1 (B) earns wages or a salary equal to at least one and one-half times
2 the Vermont average annual wage.

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

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

6 (B) solicit or transact business with customers or clients of the
7 employer who were customers or clients while the employee was employed by
8 the employer.

9 (6) “Vermont average annual wage” means the most recent **annual mean**
10 **wage** for Vermont published by the U.S. Bureau of Labor Statistics.

11 Sec. 2. EDUCATION AND OUTREACH

12 The Secretary of Commerce and Community Development, the Attorney
13 General, and the Commissioner of Labor shall, on or before October 15, 2020,
14 jointly develop and make available on the Agency of Commerce and
15 Community Development’s, the Attorney General’s, and the Department of
16 Labor’s websites information and materials to educate and inform employers
17 and employees about the provisions of 21 V.S.A. § 495o.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on July 1, 2020 and shall apply to agreements
20 entered into on or after that date.

1
2
3
4
5
6
7
8

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE

DRAFT