

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 key employee may
13 enter into an agreement not to compete with an employer at the
14 commencement of employment or in relation to a promotion or a substantial
15 change in the employee’s job responsibilities if the agreement satisfies all of
16 the following requirements:

17 (1)(A) If the agreement is in relation to a promotion or a substantial
18 change in the employee’s job responsibilities:

19 (i) the employee receives additional compensation in relation to
20 the promotion or substantial change in the employee’s job responsibilities; and

1 (ii) the agreement not to compete is supported by substantial
2 consideration that is specified in the agreement and is commensurate with the
3 burden imposed on the employee by the agreement.

4 (B) If the agreement is in relation to the commencement of
5 employment, the agreement not to compete is supported by substantial
6 consideration that is specified in the agreement and is commensurate with the
7 burden imposed on the employee by the agreement.

8 (2) The agreement is in writing and signed by the employer and the
9 employee.

10 (3)(A) If the agreement is entered into in relation to the commencement
11 of employment, it is provided to the employee with the formal offer of
12 employment or 10 days before the commencement of employment, whichever
13 is earlier; or

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

17 (4)(A) The agreement states that the employee has the right to consult
18 with an attorney prior to signing the agreement and that the employer shall
19 reimburse the employee for the cost of consulting with an attorney for the
20 purpose of reviewing the agreement and obtaining legal advice.

1 (B) The agreement shall, at a minimum, provide that the employer
2 shall reimburse the employee for a period of up to two hours of attorney time.

3 (5) The limitations set forth in the agreement are reasonable in time,
4 geographical area, and the scope of activity to be restrained.

5 (c) Nothing in this section shall be construed to prohibit:

6 (1) an agreement that prohibits the disclosure of trade secrets as defined
7 in 9 V.S.A. § 4601 or a nondisclosure agreement that protects confidential
8 business information that does not constitute a trade secret.

9 (2) a nonsolicitation agreement between an employer and an employee,
10 provided that the limitations set forth in the agreement are reasonable in time,
11 geographical area, and the scope of activity to be restrained.

12 (3) an individual from entering into an agreement not to compete in
13 relation to:

14 (A) the sale of all or substantially all of the individual's ownership
15 interest in:

16 (i) an employer or its operating assets; or

17 (ii) a subsidiary or division of an employer or the operating assets
18 of a subsidiary or division of an employer;

19 (B) the dissolution of a partnership in which the individual is a
20 partner or the dissociation of the individual from a partnership; or

1 (C) the dissolution of a limited liability company in which the
2 individual is a member or the termination of the individual’s interest in a
3 limited liability company.

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

7 (e) As used in this section:

8 (1) “Agreement not to compete” means any agreement between an
9 individual and an employer that restrains the individual from engaging in a
10 lawful profession, trade, or business.

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

16 (3) “Key employee” means an individual who:

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

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

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

- 1 (A) solicit or recruit the employer’s employees; or
- 2 (B) solicit or transact business with customers or clients of the
- 3 employer who were customers or clients while the employee was employed by
- 4 the employer.

5 (5) “Vermont average annual wage” means the most recent annual mean

6 wage for Vermont published by the U.S. Bureau of Labor Statistics.

7 Sec. 2. EDUCATION AND OUTREACH

8 The Secretary of Commerce and Community Development, the Attorney

9 General, and the Commissioner of Labor shall, on or before October 15, 2020,

10 jointly develop and make available on the Agency of Commerce and

11 Community Development’s, the Attorney General’s, and the Department of

12 Labor’s websites information and materials to educate and inform employers

13 and employees about the provisions of 21 V.S.A. § 495o.

14 Sec. 3. EFFECTIVE DATE

15 This act shall take effect on July 1, 2020 and shall apply to agreements

16 entered into on or after that date.

17

18 (Committee vote: _____)

19 _____

20 Representative _____

21 FOR THE COMMITTEE