

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 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) With respect to a business entity, the sale of:

19 (A) all or substantially all of the person’s ownership interest in the
20 business entity or its operating assets; or

1 (B) all or substantially all of the person’s ownership interest in a
2 subsidiary or division of the business entity or the operating assets of a
3 subsidiary or division of the business entity.

4 (2) With respect to a partnership in which the person is a partner, the
5 dissolution of the partnership or the dissociation of the person from the
6 partnership.

7 (3) With respect to a limited liability company in which the person is a
8 member, the dissolution of the limited liability company or the termination of
9 the person’s interest in the limited liability company.

10 (c)(1) Nothing in this section shall be construed to prohibit an agreement
11 that prohibits the disclosure of trade secrets as defined in 9 V.S.A. § 4601 or a
12 nondisclosure agreement that protects a legitimate business interest of the
13 employer.

14 (2) Notwithstanding subsection (a) of this section, a nonsolicitation
15 agreement between an employer and a key employee shall be valid and
16 enforceable if it meets the following requirements:

17 (A) The agreement protects a legitimate business interest of the
18 employer and the scope of the agreement is reasonable in relation to the
19 interest that it protects.

1 (B) The agreement in reasonable in time, and the period of
2 restriction does not exceed one year from the date on which the employee's
3 employment with the employer terminates.

4 (C) The agreement is reasonable in geographic reach in relation to
5 the interest that it protects.

6 (D)(i) If the agreement is entered into in relation to the
7 commencement of employment, it shall:

8 (I) be in writing and signed by the employee and the employer;

9 (II) be provided to the employee together with the formal offer
10 or 10 days before the commencement of employment, whichever is earlier; and

11 (III) state that the employee has the right to consult with an
12 attorney prior to signing the agreement.

13 (ii) If the agreement is entered into after commencement of
14 employment, but not in connection with the employee's separation from
15 employment, the agreement shall be:

16 (I) in writing and signed by the employee and the employer;

17 (II) supported by reasonable consideration that is separate from
18 and independent of the continuation of employment;

19 (III) provided to the employee at least 10 days before it will
20 take effect; and

1 (IV) state that the employee has the right to consult with an
2 attorney prior to signing the agreement.

3 (E) The agreement is supported by garden leave or other
4 consideration that is mutually agreed to by the key employee and the employer
5 and is specified in the agreement.

6 (F) The agreement does not unduly burden the employee’s ability to
7 earn a living and shall not be contrary to the public interest.

8 (G) The agreement states that the nonsolicitation provision shall only
9 be effective if the employee was employed by the employer for at least two
10 years before his or her employment terminated.

11 (d) Any provision of an employment contract or other agreement that
12 violates the provisions of this section shall be void and unenforceable.

13 (e) As used in this section:

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

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

1 (3) “Key employee” means an employee who is paid a salary of at least
2 \$913.00 per week and who by reason of exposure to intellectual property,
3 business plans, business processes and methods of operation, and customers or
4 other business relationships during the course of employment, has gained a
5 high level of inside knowledge about the employer’s operation and, as a result,
6 has the ability to harm or threaten an employer’s legitimate business interests.

7 (4) “Legitimate business interest” means trade secrets, confidential
8 business information that does not constitute a trade secret, customer
9 relationships, and prospective customer contacts and referral sources.

10 (5) “Nondisclosure agreement” means an agreement between an
11 employer and employee pursuant to which the employee agrees not to disclose
12 certain information specified in the agreement to third parties during the term
13 of the agreement.

14 (6) “Nonsolicitation agreement” means an agreement between an
15 employer and an employee pursuant to which the employee agrees not to
16 solicit the employer’s clients or customers during the term of the agreement.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on July 1, 2019.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE

DRAFT