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Introduced by Representatives Jerome of Brandon, Dolan of Waitsfield, Nicoll
of Ludlow, and Notte of Rutland City

Referred to Committee on

Date:

Subject: Labor; employment practices; restrictive employment agreements

Statement of purpose of bill as introduced: This bill proposes to enact the
Uniform Restrictive Employment Agreements Act.

An act relating to enacting the Uniform Restrictive Employment
Agreements Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Uniform Restrictive Employment Agreements Act

§ 571. SHORT TITLE

This subchapter may be cited as the Uniform Restrictive Employment
Agreements Act.

§ 572. DEFINITIONS

As used in this subchapter:

(1) “Confidentiality agreement” means a restrictive employment
agreement that:

1 (A) prohibits the worker from using or disclosing information; and

2 (B) is not a condition of settlement or other resolution of a dispute.

3 (2) “Electronic” means relating to technology having electrical, digital,
4 magnetic, wireless, optical, electromagnetic, or similar capabilities.

5 (3) “Employer” means a person that hires or contracts with a worker to
6 work for the person.

7 (4) “No-business agreement” means a restrictive employment agreement
8 that prohibits a worker from working for a client or customer of the employer.

9 (5) “Noncompete agreement” means a restrictive employment
10 agreement that prohibits a worker from working other than for the employer.
11 The term “noncompete agreement” does not include a no-business agreement.

12 (6) “Nonsolicitation agreement” means a restrictive employment
13 agreement that prohibits a worker from soliciting a client or customer of the
14 employer.

15 (7) “No-recruit agreement” means a restrictive employment agreement
16 that prohibits a worker from hiring or recruiting another worker of the
17 employer.

18 (8) “Payment-for-competition agreement” means a restrictive
19 employment agreement that imposes an adverse financial consequence on a
20 worker for working other than for the employer but does not expressly prohibit
21 the work.

1 (9) “Person” means an individual, estate, business or nonprofit entity, or
2 other legal entity but does not include the State, a political subdivision of the
3 State, a public instrumentality of the State, or any other governmental entity.

4 (10) “Record” means information:

5 (A) inscribed on a tangible medium; or

6 (B) stored in an electronic or other medium and retrievable in
7 perceivable form.

8 (11) “Restrictive employment agreement” means an agreement or part
9 of another agreement between an employer and worker that prohibits, limits, or
10 sets a condition on working other than for the employer after the work
11 relationship ends or a sale of a business is consummated. The term “restrictive
12 employment agreement” includes a confidentiality agreement, no-business
13 agreement, noncompete agreement, nonsolicitation agreement, no-recruit
14 agreement, payment-for-competition agreement, and training-repayment
15 agreement.

16 (12) “Sale of a business” means a sale, merger, consolidation,
17 amalgamation, reorganization, or other transaction, however denominated, of:

18 (A) all or part of a business or nonprofit entity or association, or all
19 or part of its assets; or

20 (B) a substantial ownership interest in a business or nonprofit entity
21 or association.

1 (13) “Sign” means to, with a present intent to authenticate or adopt a
2 record:

3 (A) execute or adopt a tangible symbol; or

4 (B) attach to or logically associate with the record an electronic
5 symbol, sound, or process.

6 (14) “Signed agreement” means a restrictive employment agreement
7 signed by the worker and employer.

8 (15) “Special training” means instruction or other education a worker
9 receives from a source other than the employer that:

10 (A) is designed to enhance the ability of the worker to perform the
11 worker’s work;

12 (B) is not normally received by other workers; and

13 (C) requires a significant and identifiable expenditure by the
14 employer that is distinct from ordinary on-the-job training.

15 (16) “Stated rate of pay” means the compensation, calculated on an
16 annualized basis, an employer agrees to pay a worker. The term “stated rate of
17 pay”:

18 (A) includes wages, salary, professional fees, other compensation for
19 personal services, and the fair market value of all remuneration other than
20 cash; and

21 (B) does not include:

1 (i) health care benefits, severance pay, retirement benefits, or
2 expense reimbursement;

3 (ii) distribution of earnings and profit that is not compensation for
4 personal service; or

5 (iii) anticipated but indeterminable compensation, including tips,
6 bonuses, and commissions.

7 (17) “Trade secret” has the same meaning as in 9 V.S.A. § 4601.

8 (18) “Training-repayment agreement” means a restrictive employment
9 agreement that requires a worker to repay the employer for training costs
10 incurred by the employer.

11 (19) “Work” means providing services.

12 (20) “Worker” means an individual who works for an employer. The
13 term “worker”:

14 (A) includes an employee, independent contractor, extern, intern,
15 volunteer, apprentice, sole proprietor who provides services to a client or
16 customer, and an individual who provides services through a business or
17 nonprofit entity or association; and

18 (B) does not include an individual, even if the individual performs on
19 incidental service for the employer, whose sole relationship with the employer
20 is:

1 (i) as a member of a board of directors or other governing or
2 advisory board;

3 (ii) an individual under whose authority the powers of a business
4 or nonprofit entity or association are exercised;

5 (iii) an investor; or

6 (iv) a vendor of goods.

7 § 573. SCOPE

8 (a) This subchapter applies to restrictive employment agreements. If a
9 restrictive employment agreement is part of another agreement, this subchapter
10 does not affect the other parts of the other agreement.

11 (b) This subchapter supersedes common law only to the extent that it
12 applies to a restrictive employment agreement but otherwise does not affect
13 principles of law and equity consistent with this subchapter.

14 (c) This subchapter does not affect the requirements of section 495h of this
15 title.

16 (d) This subchapter does not affect an agreement to take an action solely to
17 transfer, perfect, or enforce a patent, copyright, trade secret, or similar right.

18 (e) This subchapter does not affect a noncompetition obligation arising
19 solely as a result of an existing ownership interest in a business entity.

20 (f) This subchapter does not affect an agreement that requires a worker to
21 forfeit compensation after a work relationship ends, including leave or

1 retirement benefits, the right to which accrued before the work relationship
2 ended.

3 § 574. NOTICE REQUIREMENTS

4 (a) Except as otherwise provided in subsection (e) of this section, a
5 restrictive employment agreement shall be prohibited and unenforceable
6 unless:

7 (1) the employer provides a copy of the proposed agreement in a record
8 to:

9 (A) subject to the provisions of subsection (b) of this section, a
10 prospective worker at least 14 days before the prospective worker accepts work
11 or commences work, whichever is earlier;

12 (B) a current worker who receives a material increase in
13 compensation at least 14 days before the increase or before the worker accepts
14 a change in job status or responsibilities, whichever is earlier; or

15 (C) a departing worker who is given consideration in addition to
16 anything of value to which the worker already is entitled, at least 14 days
17 before the agreement is required to be signed;

18 (2) with the copy of the proposed agreement provided under subdivision
19 (1) of this subsection, the employer provides the worker in a record the
20 separate notice, in the preferred language of the worker if available, provided
21 by the Department of Labor pursuant to subsection (d) of this section;

1 (3) the proposed agreement and the signed agreement clearly specify the
2 information, type of work activity, or extent of competition that the agreement
3 prohibits, limits, or sets conditions on after the work relationship ends;

4 (4) the agreement is in a record separately signed by the worker and
5 employer and the employer promptly provides the worker with a copy of the
6 signed agreement; and

7 (5) subject to the provisions of subsection (c) of this section, the
8 employer provides an additional copy of the agreement to the worker not later
9 than 14 days after the worker, in a record, requests a copy, unless the employer
10 reasonably and in good faith is unable to provide the copy not later than
11 14 days after the request and the worker is not prejudiced by the delay.

12 (b) A worker may waive the 14-day requirement of subdivision (a)(1)(A)
13 of this section if the worker receives the signed agreement before beginning
14 work. If the worker waives the requirement, the worker may rescind the entire
15 work agreement not later than 14 days after the worker receives the agreement.

16 (c) An employer is not required under subdivision (a)(5) of this section to
17 provide an additional copy of the agreement more than once during a calendar
18 year.

19 (d)(1) The Commissioner of Labor shall create a notice of the provisions of
20 this subchapter that an employer shall provide to a worker pursuant to
21 subdivision (a)(2) of this section.

1 (2) The notice shall inform workers, in language that an average reader
2 can understand, of the requirements of this subchapter, including the
3 requirements of subsection (a) of this section and sections 575 through 584 of
4 this subchapter, and shall state that this subchapter establishes penalties for an
5 employer that enters into a prohibited agreement.

6 (3) The Commissioner shall make the notice available to employers and
7 employees on a publicly accessible website and in any other manner the
8 Commissioner determines to be appropriate.

9 (4) The Commissioner may, in the Commissioner's discretion:

10 (A) produce separate notices for one or more types of restrictive
11 employment agreements; and

12 (B) translate the notices into languages other than English that are
13 used by a substantial portion of the State's labor force.

14 (e) This section shall not apply to a restrictive employment agreement in
15 connection with the sale of a business of which the worker is a substantial
16 owner and consents to the sale.

17 § 575. LOW WAGE WORKERS

18 A restrictive employment agreement, other than a confidentiality agreement
19 or training-repayment agreement, shall be:

20 (1) prohibited and unenforceable if, when the worker signs the
21 agreement, the worker has a stated rate of pay that is less than one and one-half

1 times the most recent annual average wage for Vermont as determined by the
2 Vermont Department of Labor; and

3 (2) unenforceable if, at any time during the work relationship, the
4 worker's compensation from the employer, calculated on an annualized basis,
5 is less than one and one-half times the annual average wage for Vermont as
6 determined by the Vermont Department of Labor.

7 § 576. EFFECT OF TERMINATION OF WORK

8 A restrictive employment agreement, other than a confidentiality agreement
9 or training-repayment agreement, shall be unenforceable if:

10 (1) the worker resigns for good cause attributable to the employer; or

11 (2) the employer terminates the worker for a reason other than gross
12 misconduct as defined pursuant to subdivision 1344(a)(2)(B) of this title or the
13 completion of the agreed work or the term of the contract or employment
14 agreement.

15 § 577. REASONABLENESS REQUIREMENT

16 A restrictive employment agreement shall be prohibited and unenforceable
17 unless it is reasonable.

18 § 578. NONCOMPETE AGREEMENT

19 A noncompete agreement shall be prohibited and unenforceable unless:

20 (1) the agreement protects any of the following legitimate business
21 interests:

1 (A) the sale of a business of which the worker is a substantial owner
2 and consents to the sale;

3 (B) the creation of a business in which the worker is a substantial
4 owner;

5 (C) a trade secret; or

6 (D) an ongoing client or customer relationship of the employer;

7 (2) when the worker signs the agreement and through the time of
8 enforcement, the agreement is narrowly tailored in duration, geographical area,
9 and scope of actual competition to protect an interest listed in subdivision (1)
10 of this section, and the interest cannot be protected adequately by another
11 restrictive employment agreement; and

12 (3) the prohibition on competition lasts not longer than:

13 (A) five years after the work relationship ends when protecting an
14 interest under subdivision (1)(A) or (B); or

15 (B) one year after the work relationship ends when protecting an
16 interest under subdivision (1)(C) or (D) but not an interest under subdivision
17 (1)(A) or (1)(B).

18 § 579. CONFIDENTIALITY AGREEMENT

19 A confidentiality agreement is prohibited and unenforceable unless the
20 worker may use and disclose information that:

1 (1) arises from the worker’s general training, knowledge, skill, or
2 experience, whether gained on the job or otherwise;

3 (2) is readily ascertainable to the relevant public; or

4 (3) is irrelevant to the employer’s business.

5 § 580. NO-BUSINESS AGREEMENT

6 A no-business agreement is prohibited and unenforceable unless the
7 agreement:

8 (1) applies only to a prospective and ongoing client or customer of the
9 employer with which the worker had worked personally; and

10 (2) lasts not longer than six months after the work relationship between
11 the employer and worker ends.

12 § 581. NONSOLICITATION AGREEMENT

13 A nonsolicitation agreement is prohibited and unenforceable unless the
14 agreement:

15 (1) applies only to a prospective or ongoing client or customer of the
16 employer with which the worker had worked personally; and

17 (2) lasts not longer than one year after the work relationship between the
18 employer and worker ends.

19 § 582. NO-RECRUIT AGREEMENT

20 A no-recruit agreement is prohibited and unenforceable unless the
21 agreement prohibits hiring or recruiting only:

1 (1) another worker currently working for the employer with whom the
2 worker had worked personally; and

3 (2) lasts not longer than six months after the work relationship between
4 the employer and worker ends.

5 § 583. PAYMENT-FOR-COMPETITION AGREEMENT

6 A payment-for-competition agreement is prohibited and unenforceable
7 unless the agreement:

8 (1) imposes a financial consequence that is not greater than the actual
9 competitive harm to the employer; and

10 (2) lasts not longer than one year after the work relationship between the
11 employer and worker ends.

12 § 584. TRAINING REPAYMENT AGREEMENT

13 A training repayment agreement is prohibited and unenforceable unless the
14 agreement:

15 (1) requires repayment only of the cost of special training;

16 (2) lasts not longer than two years after special training is completed;

17 and

18 (3) prorates the repayment for work done during the post-training
19 period.

1 § 585. NONWAIVABILITY

2 Except as provided in subsection 574(b) of this subchapter or in the context
3 of resolving an issue in litigation or other dispute resolution, a party to a
4 restrictive employment agreement may not waive a requirement of this
5 subchapter or stipulate to a fact to avoid a requirement of this subchapter.

6 § 586. ENFORCEMENT AND REMEDY

7 (a) A court shall not modify a restrictive employment agreement to make it
8 enforceable.

9 (b) An employer seeking to enforce a restrictive employment agreement
10 shall have the burden of proving that the agreement is in compliance with the
11 provisions of this subchapter.

12 (c) The Attorney General or a State's Attorney may enforce the provisions
13 of this subchapter by restraining prohibited acts, seeking civil penalties,
14 obtaining assurances of discontinuance, and conducting civil investigations in
15 accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as
16 though a violation of this subchapter were an unfair act in commerce. Any
17 employer complained against shall have the same rights and remedies as
18 specified in those sections. The Superior Court is authorized to impose the
19 same civil penalties and investigation costs and to order other relief to the State
20 of Vermont or an aggrieved employee for violations of this subchapter as they
21 are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458

1 and 2461 in an unfair act in commerce. In addition, the Superior Court may
2 order restitution of wages or other benefits on behalf of an employee and may
3 order reinstatement and other appropriate relief on behalf of an employee.

4 (d) Any worker who is a party to a restrictive employment agreement, or a
5 subsequent employer that has hired or is considering hiring the worker, and is
6 aggrieved by a violation of the provisions of this subchapter may bring an
7 action in Superior Court seeking compensatory and punitive damages or
8 equitable relief, including restraint of prohibited acts, restitution of wages or
9 other benefits, reinstatement, costs, reasonable attorney's fees, and other
10 appropriate relief.

11 § 587. CHOICE OF LAW AND VENUE

12 (a) A choice of law provision that applies to a restrictive employment
13 agreement is prohibited and unenforceable unless it requires that a dispute
14 arising under the agreement be governed by the law of the jurisdiction where
15 the worker primarily works for the employer or, if the work relationship has
16 ended, the jurisdiction where the worker primarily worked when the
17 relationship ended.

18 (b) A choice of venue provision that applies to a restrictive employment
19 agreement is prohibited and unenforceable unless it requires that a dispute
20 arising under the agreement be decided in a jurisdiction where:

- 1 (1) the worker primarily works or, if the work relationship has ended, a
2 jurisdiction where the worker primarily worked when the relationship ended;
3 or
4 (2) the worker resides at the time of the dispute.

5 § 588. UNIFORMITY OF APPLICATION AND CONSTRUCTION

6 In applying and construing this uniform act, a court shall consider the
7 promotion of uniformity of the law among the jurisdictions that enact this
8 uniform act.

9 § 589. SAVINGS PROVISION

10 Except as provided pursuant to section 590 of this subchapter, the
11 provisions of this subchapter shall not affect the validity of a restrictive
12 employment agreement in effect before July 1, 2022.

13 § 590. TRANSITIONAL PROVISION

14 Subdivision 574(a)(5) and section 575 of this subchapter shall apply to a
15 restrictive employment agreement entered into before, on, or after July 1, 2022.

16 Sec. 2. EFFECTIVE DATE

17 This act shall take effect on July 1, 2022.