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H.205

Introduced by Representatives Marcotte of Coventry, Bosch of Clarendon,
Christie of Hartford, Cooper of Pownal, Duke of Burlington,
Graning of Jericho, LaLonde of South Burlington, Micklus of
Milton, Olson of Starksboro, and White of Bethel

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection; noncompete agreements

Statement of purpose of bill as introduced: This bill proposes to prohibit
noncompete agreements that restrict the ability of franchisees from operating
their businesses after separating from franchisors and of employees from
competing with their former employers following the conclusion of their
employment.

An act relating to agreements not to compete

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

Sec. 1. 9 V.S.A. chapter 153 is added to read:

CHAPTER 153. FRANCHISE AGREEMENTS

§ 6061. DEFINITIONS

As used in this chapter:

1 (1)(A) “Agreement not to compete” means an agreement between a
2 franchisor and franchisee that restricts the franchisee after separating from the
3 franchisor from operating its business:

4 (i) in a certain geographic area;

5 (ii) for a certain period of time; or

6 (iii) in any other way that significantly impacts the ability of the
7 franchisee to compete with the franchisor.

8 (B) An agreement not to compete does not include an agreement that
9 prohibits the disclosure of trade secrets as defined in section 4601 of this title
10 or a nondisclosure agreement that protects confidential business information
11 that does not constitute a trade secret.

12 (2) “Franchise agreement” means an agreement in which a franchisor
13 grants a franchisee the right to operate a business or to offer, sell, or distribute
14 goods or services identified or associated with the franchisor’s trademark.

15 (3) “Franchisee” means a person who currently operates or formerly
16 operated a business under a franchisor’s name, trademark, or other identifying
17 information, pursuant to a franchise agreement.

18 (4) “Franchisor” means a person that sells the right to operate a business
19 to a franchisee pursuant to a franchise agreement.

1 § 6062. AGREEMENTS NOT TO COMPETE; PROHIBITION; NOTICE

2 (a) Prohibition. Any agreement not to compete, including an agreement
3 not to compete contained within a contract or franchise agreement, is void and
4 unenforceable.

5 (b) Notice. For existing agreements not to compete that violate subsection
6 (a) of this section, the franchisor must notify each franchisee that is party to the
7 agreement that the agreement not to compete is void and legally unenforceable.
8 Notice shall be in the form of a written individualized communication
9 addressed to the franchisee or former franchisee and shall be delivered to the
10 last known address and email address of the franchisee or former franchisee.

11 Sec. 2. 21 V.S.A. § 495q is added to read:

12 § 495q. AGREEMENTS NOT TO COMPETE; PROHIBITION;

13 EXCEPTIONS; NOTICE; EMPLOYEE RIGHTS

14 (a) Definitions. As used in this section:

15 (1)(A) “Agreement not to compete” means an agreement between an
16 employer and an employee that restricts the employee after separating from
17 employment from performing:

18 (i) work for another employer for a specified period of time;

19 (ii) work in a specified geographical area; or

1 (iii) work for another employer in a capacity similar to the
2 employee’s work for the employee’s former employer that is party to the
3 agreement.

4 (B) “Agreement not to compete” does not include:

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

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

12 (2) “Nonsolicitation agreement” means an agreement between an
13 employer and 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 (3) “Severance agreement” means an agreement between an employer
19 and employee pursuant to which the employee voluntarily agrees to leave
20 employment with the employer for a sum of money or other consideration.

1 (b) Prohibition. An agreement not to compete, including an agreement not
2 to compete contained within a contract, is void and unenforceable.

3 (c) Exceptions. Nothing in this section shall be construed to prohibit an
4 individual from entering into an agreement not to compete in relation to:

5 (1) the sale of all or substantially all of the individual's ownership
6 interest in:

7 (A) a business or its operating assets; or

8 (B) a subsidiary or division of a business or the operating assets of a
9 subsidiary or division of a business;

10 (2) the dissolution of a partnership in which the individual is a partner or
11 the dissociation of the individual from a partnership;

12 (3) the dissolution of a limited liability company in which the individual
13 is a member or the termination of an individual's interest in a limited liability
14 company; or

15 (4) a severance agreement, provided that the limitations set forth in the
16 agreement are reasonable in:

17 (A) time, provided further that the limitation on time cannot exceed
18 the number of weeks or months of pay, however appropriately calculated, that
19 the employer offers to the employee in consideration to sign the agreement;

20 (B) geographical area; and

21 (C) the scope of activity to be restrained.

1 (d) Wage threshold.

2 (1) Subject to subdivision (2) of this subsection, this section shall not
3 apply to an agreement not to compete between an employer and an employee
4 to whom the employer pays \$100,000.00 or more annually in gross wages.

5 (2) An employer requiring a prospective employee to sign an agreement
6 not to compete that is in accordance with this section shall:

7 (A) provide the prospective employee with the proposed agreement
8 at the time the offer of employment to the prospective employee is made; and

9 (B) not rescind the offer of employment to the prospective employee
10 any earlier than three business days after the prospective employee receives the
11 agreement not to compete.

12 (e) Notice. For existing agreements not to compete that violate subsection
13 (b) of this section, the employer must notify each employee that is party to the
14 agreement that the agreement not to compete is void and legally unenforceable.

15 Notice shall be in the form of a written individualized communication
16 addressed to the employee or former employee and shall be delivered to the
17 last known address and email address of the employee or former employee.

18 (f) Employee rights. The provisions against retaliation in subdivision
19 495(a)(8) of this title and the penalty and enforcement provisions of section
20 495b of this title shall apply to this section.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2025.