

1 H.334

2 Introduced by Representatives Logan of Burlington, Bos-Lun of Westminster,
3 Casey of Montpelier, Cina of Burlington, Cordes of Bristol,
4 Headrick of Burlington, Hooper of Burlington, McCann of
5 Montpelier, McGill of Bridport, Priestley of Bradford, and
6 Tomlinson of Winooski

7 Referred to Committee on

8 Date:

9 Subject: Labor; employment practices; agreements not to compete; stay-or-pay
10 provisions

11 Statement of purpose of bill as introduced: This bill proposes to restrict the
12 use of noncompete agreements that prohibit individuals from competing with
13 their former employers. This bill also proposes to restrict the use of “stay-or-
14 pay” provisions that require employees to repay certain costs to an employer
15 when separating from employment.

16 An act relating to limiting employer restrictions on individuals separating
17 from employment

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

2 Sec. 1. 21 V.S.A. § 495q is added to read:

3 § 495q. AGREEMENTS NOT TO COMPETE; PROHIBITION;

4 EXCEPTIONS; NOTICE; EMPLOYEE RIGHTS

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

6 (1)(A) “Agreement not to compete” means an agreement between an
7 employer and an employee that restricts the employee, after separating from
8 employment, from performing:

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

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

11 (iii) work for another employer in a capacity similar to the
12 employee’s work for the employee’s former employer that is party to the
13 agreement.

14 (B) An agreement not to compete does not include:

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

18 (ii) a nonsolicitation agreement between an employer and an
19 employee, provided that the limitations set forth in the agreement are
20 reasonable in time, geographical area, and the scope of activity to be
21 restrained.

1 (2) “Nonsolicitation agreement” means an agreement between an
2 employer and employee pursuant to which the employee agrees not to:

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

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

7 (b) Prohibition. Any agreement not to compete, including an agreement
8 not to compete contained within a contract, is void and unenforceable.

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

11 (1) the sale of all or substantially all of the individual’s ownership
12 interest in:

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

14 (B) a subsidiary or division of a business or the operating assets of a
15 subsidiary or division of a business;

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

18 (3) the dissolution of a limited liability company in which the individual
19 is a member or the termination of an individual’s interest in a limited liability
20 company.

1 (d) Notice. For existing agreements not to compete that violate subsection
2 (b) of this section, the employer must notify each employee who is party to the
3 agreement that the agreement not to compete is void and legally unenforceable.

4 Notice shall be in the form of a written individualized communication
5 addressed to the employee or former employee and shall be delivered to the
6 last known address and email address of the employee or former employee.

7 (e) Employee rights. The provisions against retaliation in subdivision
8 495(a)(8) of this title and the penalty and enforcement provisions of section
9 495b of this title shall apply to this section.

10 Sec. 2. 21 V.S.A. § 495r is added to read:

11 § 495r. STAY-OR-PAY PROVISIONS; RESTRICTIONS; EXCEPTIONS;

12 NOTICE; EMPLOYEE RIGHTS

13 (a) As used in this section, “stay-or-pay provision” means an agreement
14 between an employer and an employee that requires the employee to pay the
15 employer upon the employee’s separation from employment. Stay-or-pay
16 provisions take a variety of forms, including training repayment provisions,
17 educational repayment contracts, quit fees, damages clauses, sign-on bonuses
18 or other types of cash payments tied to a mandatory stay period, and other

1 contracts under which an employee must pay an employer in the event that the
2 employee voluntarily or involuntarily separates from employment.

3 (b) It shall be an unlawful employment practice for an employer to require
4 an employee to pay the employer, pursuant to a stay-or-pay provision,
5 following an employee's separation from employment.

6 (c) Notwithstanding subsection (b) of this section, a stay-or-pay provision
7 shall not be an unlawful employment practice if:

8 (1) the employee voluntarily agrees to the provision in exchange for a
9 benefit;

10 (2) the repayment amount is reasonable and does not exceed the cost to
11 the employer of the benefit received by the employee;

12 (3) the repayment amount is specific and provided to the employee
13 before the employee agrees to the provision;

14 (4) the length of the stay period associated with the provision is
15 reasonable based upon a number of factors, including:

16 (A) the cost of the benefit bestowed;

17 (B) the value of the benefit to the employee; and

18 (C) whether the repayment amount decreases over the course of the
19 stay period; and

20 (5) the provision does not require repayment if the employee is
21 terminated without cause.

1 (d) For existing stay-or-pay provisions that violate subsection (b) of this
2 section, the employer must notify each employee who is subject to the
3 provision that it is void and legally unenforceable. Notice shall be in the form
4 of a written individualized communication addressed to the employee or
5 former employee and shall be delivered to the last known address and email
6 address of the employee or former employee.

7 (e) An employer shall not retaliate against an employee who exercises or
8 attempts to exercise the rights provided under this section, including opting not
9 to enter into a stay-or-pay provision. The provisions against retaliation in
10 subdivision 495(a)(8) of this title and the penalty and enforcement provisions
11 of section 495b of this title shall apply to this section.

12 Sec. 3. EFFECTIVE DATE

13 This act shall take effect on passage.