

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 205 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. [Deleted.]

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

9 § 495q. AGREEMENTS NOT TO COMPETE; PROHIBITION;

10 EXCEPTIONS; NOTICE; EMPLOYEE RIGHTS

11 (a) Legislative intent. It is the intent of the General Assembly to
12 discourage the use of agreements not to compete except in rare circumstances
13 where the agreement is the result of a bargained-for exchange that furthers
14 legitimate commercial interests. Agreements not to compete between an
15 employer and a nonexempt employee, per the Fair Labor Standards Act,
16 29 U.S.C. §§ 201–219, are presumptively coercive and a restraint on trade.

17 (b) Definitions. As used in this section:

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

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

22 (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) “Executive employee” means a senior executive at the highest level
13 of the employing entity with access to proprietary information critical to the
14 employer’s business interests.

15 (3)(A) “Nonsolicitation agreement” means an agreement of not more
16 than one year in duration between an employer and employee pursuant to
17 which the employee agrees not to:

18 (i) solicit or recruit the employer’s employees; or

19 (ii) solicit business with customers or clients of the employer that
20 were customers or clients while the employee was employed by the employer.

21 (B) Notwithstanding subdivision (A) of this subdivision (b)(3), it
22 shall not be a violation of a nonsolicitation agreement for a separating

1 employee to provide notice of the employee’s change of employment to clients
2 with whom the separating employee had a direct attorney-client, patient-
3 medical provider, or fiduciary relationship.

4 (4) “Severance agreement” means an agreement between an employer
5 and employee pursuant to which the employee voluntarily agrees to leave
6 employment with the employer for a sum of money or other consideration.

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

9 (d) 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;

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; or

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

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

4 (B) geographical area; and

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

6 (e) Wage threshold.

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

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

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

15 (B) not rescind the offer of employment to the prospective employee
16 any earlier than three business days after the prospective employee receives the
17 agreement not to compete. The employer may rescind the offer within three
18 business days if the employer discovers information about the prospective
19 employee that supports rescission of the offer.

20 (f) Employee rights. The provisions against retaliation in subdivision
21 495(a)(8) of this title and the penalty and enforcement provisions of section
22 495b of this title shall apply to this section.

1 Sec. 3. 21 V.S.A. § 495r is added to read:

2 § 495r. STAY-OR-PAY PROVISIONS; RESTRICTIONS; EXCEPTIONS;

3 NOTICE; EMPLOYEE RIGHTS

4 (a) As used in this section, “stay-or-pay provision” means an agreement
5 between an employer and an employee that requires the employee to pay the
6 employer upon the employee’s separation from employment. Stay-or-pay
7 provisions take a variety of forms, including training repayment provisions,
8 educational repayment contracts, quit fees, damages clauses, sign-on bonuses
9 or other types of cash payments tied to a mandatory stay period, and other
10 contracts under which an employee must pay an employer in the event that the
11 employee voluntarily or involuntarily separates from employment.

12 (b) It shall be an unlawful employment practice for an employer to require
13 an employee to pay the employer, pursuant to a stay-or-pay provision,
14 following an employee’s separation from employment.

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

17 (1) the employee voluntarily agrees to the provision in exchange for a
18 benefit;

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

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

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

3 (A) the cost of the benefit bestowed;

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

5 (C) whether the repayment amount decreases over the course of the
6 stay period; and

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

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

14 Sec. 4. EFFECTIVE DATE

15 This act shall take effect on July 1, 2026.

1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE