

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 in which 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;

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; or

12                  (iii) contracts with teachers pursuant to 16 V.S.A. § 1752(a).

13                  (2) “Health care provider” has the same meaning as in 18 V.S.A.  
14                  § 9402.

15                  (3) “Health care services” means services for the diagnosis, prevention,  
16                  treatment, cure, or relief of a physical or mental condition, including  
17                  counseling, procedures, products, devices, and medications.

18                  (4)(A) “Nonsolicitation agreement” means an agreement of not more  
19                  than one year in duration between an employer and employee pursuant to  
20                  which the employee agrees not to:

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

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

3                    (B) Notwithstanding subdivision (A) of this subdivision (b)(4), it  
4                    shall not be a violation of a nonsolicitation agreement for a separating  
5                    employee to provide notice of the employee’s change of employment to clients  
6                    for whom the separating employee provided direct medical care services or  
7                    with whom the employee had a direct fiduciary relationship. The notice shall  
8                    include:

9                    (i) that the employee is continuing to practice the employee’s  
10                   profession;

11                   (ii) the employee’s new professional contact information; and

12                   (iii) the client’s or patient’s right to choose a provider.

13                   (5) “Senior executive” means an employee with policy-making authority  
14                   and access to proprietary information critical to the employer’s business  
15                   interests, who earns at least 150 percent of the salary threshold for highly  
16                   compensated employees under the Fair Labor Standards Act in total annual  
17                   compensation.

18                   (6) “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,  
21                   including nonqualified deferred compensation plans.

1           (7) “Startup employee” means an employee of a newly established  
2           business familiar with the employing entity’s operations, processes, and  
3           business plans, who earns at least 250 percent of the State minimum wage in  
4           total annual compensation.

5           (8) “Total annual compensation” includes salary, commissions,  
6           nondiscretionary bonuses, and other nondiscretionary compensation earned  
7           during a calendar year. Total annual compensation does not include board,  
8           lodging, payments for medical insurance, payments for life insurance,  
9           contributions to retirement plans, or the cost of other similar benefits.

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

12          (d) Exceptions. Nothing in this section shall be construed to prohibit an  
13          individual from entering into an agreement not to compete in relation to:

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

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

17                       (B) a subsidiary or division of a business or the operating assets of a  
18               subsidiary or division of a business;

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

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

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

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

9                   (B) geographical area; and

10                  (C) the scope of activity to be restrained; and

11           (5) an agreement not to compete with a senior executive or a startup  
12           employee, provided that that the limitations set forth in the agreement are  
13           reasonable in time, geographical area, and scope as set forth in subdivision (4)  
14           of this subsection.

15           (e) Health care providers.

16                   (1) Notwithstanding subdivision (d)(5) of this section, any contract or  
17                   agreement that creates or establishes the terms of a partnership, employment,  
18                   or any other form of professional relationship with a health care provider in  
19                   Vermont, which includes any restriction of the right of such health care  
20                   provider to provide health care services in any geographic area for any period  
21                   of time after the termination of such partnership, employment, or professional  
22                   relationship shall be void and unenforceable with respect to such restriction.

1           (2) A provision in an agreement to provide health care services in this  
2           State is void, unenforceable, and against public policy if the provision:

3                   (A) makes the agreement subject to the laws of another state; or

4                   (B) requires any litigation arising out of the agreement to be  
5           conducted in another state.

6           (f) Notice and opportunity to review.

7           (1) An employer requiring a prospective employee to sign an agreement  
8           not to compete that is in accordance with subdivision (d)(5) of this section  
9           shall:

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

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

17           (2) An employer requiring a current employee to sign an agreement not  
18           to compete that is in accordance with subdivision (d)(5) of this section shall  
19           provide the employee with the proposed agreement and give the employee at  
20           least three business days to consider the agreement not to compete before  
21           signing it.

1       (g) Collective bargaining. Nothing in this section shall be construed to  
2       limit, alter, or modify the terms, conditions, or provisions of a collective  
3       bargaining agreement entered into between an employer and a labor  
4       organization representing employees.

5       (h) Employee rights. The provisions against retaliation in subdivision  
6       495(a)(8) of this title and the penalty and enforcement provisions of section  
7       495b of this title shall apply to this section.

8       (i) Posting. An employer shall post notice of the provisions of this section  
9       in a form provided by the Commissioner in a place conspicuous to employees  
10       at the employer's place of business.

11       (j) Effective date. The provisions of this section shall apply to all  
12       agreements not to compete entered into on or after July 1, 2026.

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

14       § 495r. STAY-OR-PAY PROVISIONS; RESTRICTIONS; EXCEPTIONS;

15               NOTICE; EMPLOYEE RIGHTS

16       (a) As used in this section, “stay-or-pay provision” means an agreement  
17       between an employer and an employee that requires the employee to pay the  
18       employer upon the employee's separation from employment. Stay-or-pay  
19       provisions take a variety of forms, including training repayment provisions,  
20       educational repayment contracts, quit fees, damages clauses, sign-on bonuses  
21       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 only requires repayment if the employee voluntarily  
21 separates from employment.



1        (d) Nothing in this section shall be construed to limit, alter, or modify the  
2        terms, conditions, or provisions of a collective bargaining agreement entered  
3        into between an employer and a labor organization representing employees.

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

9        (f) An employer shall post notice of the provisions of this section in a form  
10       provided by the Commissioner in a place conspicuous to employees at the  
11       employer's place of business.

12       (g) The provisions of this section shall apply to all stay-or-pay agreements  
13       entered into on or after July 1, 2026.

14       Sec. 4. EFFECTIVE DATE

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

1 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Representative \_\_\_\_\_

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FOR THE COMMITTEE