

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) “Fiduciary relationship” means a relationship in which an employee
14 owes a client the duties of loyalty, care, and good faith to act primarily in the
15 best interests of the client.

16 (3) “Health care provider” has the same meaning as in 18 V.S.A.
17 § 9402.

18 (4) “Health care service” means any treatment or procedure delivered by
19 a health care provider to maintain an individual’s physical or mental health or
20 to diagnose or treat an individual’s physical or mental condition, including
21 services ordered by a health care provider, chronic care management,

1 preventive care, wellness services, and medically necessary services to assist in
2 activities of daily living.

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

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

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

9 (B) Notwithstanding subdivision (A) of this subdivision (b)(5), it
10 shall not be a violation of a nonsolicitation agreement for a separating
11 employee to provide notice of the employee’s change of employment to clients
12 for whom the separating employee provided direct health care services or with
13 whom the employee had a direct fiduciary relationship. The notice shall
14 include:

15 (i) that the employee is continuing to practice the employee’s
16 profession;

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

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

19 (6) “Severance agreement” means an agreement between an employer
20 and employee pursuant to which the employee voluntarily agrees to leave
21 employment with the employer for a sum of money or other consideration,
22 including nonqualified deferred compensation plans.

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

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

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

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

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

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

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

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

20 (4) a severance agreement, provided that the limitations set forth in the
21 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; and

6 (5) an agreement with an exempt employee, per the Fair Labor
7 Standards Act, that meets each of the following criteria:

8 (A) the agreement is individually negotiated between the employer
9 and the employee;

10 (B) the employee earns at least 250 percent of the State minimum
11 wage in total annual compensation;

12 (C) the agreement is strictly necessary to protect a specific and
13 documented business interest of the employer, other than an interest in
14 preventing ordinary competition, and without the agreement the employer's
15 business would be at immediate risk; and

16 (D) the limitations set forth in the agreement are reasonable in time,
17 geographical area, and scope as set forth in subdivision (4) of this subsection
18 (d) and are no broader than required to protect the employer's legitimate
19 interests.

20 (e) Health care providers.

21 (1) Notwithstanding subdivision (d)(5) of this section, any contract or
22 agreement that creates or establishes the terms of a partnership, employment,

1 or any other form of professional relationship with a health care provider in
2 Vermont, which includes any restriction of the right of such health care
3 provider to provide health care services in any geographical area for any period
4 of time after the termination of such partnership, employment, or professional
5 relationship, shall be void and unenforceable with respect to such restriction.

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

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

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

11 (f) Notice and opportunity to review.

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

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

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

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

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

10 (h) Employee rights. The provisions against retaliation in subdivision
11 495(a)(8) of this title and the penalty and enforcement provisions of section
12 495b of this title shall apply to this section.

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

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

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

19 § 495r. STAY-OR-PAY PROVISIONS; RESTRICTIONS; EXCEPTIONS;
20 NOTICE; EMPLOYEE RIGHTS

21 (a) As used in this section, “stay-or-pay provision” means an agreement
22 between an employer and an employee that requires the employee to pay the

1 employer upon the employee's separation from employment. Stay-or-pay
2 provisions take a variety of forms, including training repayment provisions,
3 educational repayment contracts, quit fees, damages clauses, sign-on bonuses,
4 relocation expenses or other types of cash payments tied to a mandatory stay
5 period, and other contracts under which an employee must pay an employer in
6 the event that the employee voluntarily or involuntarily separates from
7 employment.

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

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

13 (1) the employee voluntarily agrees to the provision in exchange for a
14 benefit;

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

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

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

21 (A) the cost of the benefit bestowed;

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

1 (C) whether the repayment amount decreases over the course of the
2 stay period; and

3 (5) the provision only requires repayment if the employee voluntarily
4 separates from employment or is terminated for cause.

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

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

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

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

18 Sec. 4. EFFECTIVE DATE

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

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6 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE