

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” means a person licensed, certified, or
14 authorized by law to provide professional health care service in this State to an
15 individual during that individual’s medical care, treatment, or confinement.

16 (3) “Health care service” means any treatment or procedure delivered by
17 a health care provider to maintain an individual’s physical or mental health or
18 to diagnose or treat an individual’s physical or mental condition, including
19 services ordered by a health care provider, chronic care management,
20 preventive care, wellness services, and medically necessary services to assist in
21 activities of daily living.

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

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

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

7 (B) Notwithstanding subdivision (A) of this subdivision (b)(4), it
8 shall not be a violation of a nonsolicitation agreement for a separating health
9 care provider to provide notice of the provider’s change of employment to
10 individuals to whom the separating provider provided direct health care
11 service. The notice shall include:

12 (i) that the health care provider is continuing to practice the
13 provider’s profession;

14 (ii) the health care provider’s new professional contact
15 information; and

16 (iii) the individual’s right to choose a provider.

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

21 (6) “Total annual compensation” includes salary, commissions,
22 nondiscretionary bonuses, contributions to retirement plans, and other

1 nondiscretionary compensation earned during a calendar year. Total annual
2 compensation does not include board, lodging, payments for medical
3 insurance, payments for life insurance, or the cost of other similar benefits.

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

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

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

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

11 (B) a subsidiary or division of a business or the operating assets of a
12 subsidiary or division of a business;

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

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

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

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

1 (B) geographical area; and

2 (C) the scope of activity to be restrained;

3 (5) an agreement permitted under rules approved by the Securities and
4 Exchange Commission; or

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

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

9 (B) the employee earns at least 300 percent of the State minimum
10 wage in total annual compensation;

11 (C) the agreement is necessary to protect a significant business
12 interest of the employer, other than an interest in preventing ordinary
13 competition, where the employee’s subsequent employment would inherently
14 result in a material risk to the employer’s business; and

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

19 (e) Health care providers. Notwithstanding subdivision (d) of this section,
20 any contract or agreement that creates or establishes the terms of a partnership,
21 employment, or any other form of professional relationship with a health care
22 provider regarding the provider’s provision of health care services in this State

1 shall be void, unenforceable, and against public policy if the contract or
2 agreement:

3 (1) includes any restriction of the right of such health care provider to
4 provide health care services in any geographical area for any period of time
5 after the termination of such partnership, employment, or professional
6 relationship, with respect to such restriction;

7 (2) makes the agreement subject to the laws of another state; or

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

10 (f) Notice and opportunity to review.

11 (1) An employer requiring a prospective employee to sign an agreement
12 not to compete that is in accordance with subdivision (d)(6) of this section
13 shall:

14 (A) Provide the prospective employee with the proposed agreement
15 at the time the offer of employment to the prospective employee is made.

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

21 (2) An employer requiring a current employee to sign an agreement not
22 to compete that is in accordance with subdivision (d)(6) of this section shall

1 provide the employee with the proposed agreement and give the employee at
2 least three business days to consider the agreement not to compete before
3 signing it.

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

8 (h) Employee rights. The provisions against retaliation in subdivision
9 495(a)(8) of this title and the penalty and enforcement provisions of section
10 495b of this title shall apply to this section.

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

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

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

17 § 495r. STAY-OR-PAY PROVISIONS; RESTRICTIONS; EXCEPTIONS;
18 NOTICE; EMPLOYEE RIGHTS

19 (a) As used in this section, “stay-or-pay provision” means an agreement
20 between an employer and an employee that requires the employee to pay the
21 employer upon the employee’s separation from employment. Stay-or-pay
22 provisions take a variety of forms, including training repayment provisions,

1 educational repayment contracts, quit fees, damages clauses, sign-on bonuses,
2 relocation expenses, and other types of cash payments tied to a mandatory stay
3 period.

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

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

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

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

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

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

17 (A) the cost of the benefit bestowed;

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

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

21 (5) the provision only requires repayment if:

22 (A) the employee voluntarily separates from employment;

1 (B) the employee is separated from employment during the first six
2 months of the employee’s probationary period; or

3 (C) the employee is terminated for cause.

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

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

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

17 Sec. 4. EFFECTIVE DATE

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

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE