TO: Chairman Michael Marcotte, House Commerce Committee
Vice Chair Edye Graning, House Commerce Committee
Members of the House Commerce Committee

FROM: Members of the Non-Compete Agreements Study Committee

REGARDING: The Landscape of Non-Compete Agreements in Vermont and Possible Legislation

DATE: December 8, 2025

REPORTING REQUIREMENTS

The working group came together at the request of the Chair and Vice Chair and were tasked with looking at the following issues:

- What is the current case law on the enforceability of non-compete agreements in Vermont and at the federal level?
- Provide the current or proposed federal regulation of non-compete agreements in employment contracts.
- Summarize how other states are regulating non-compete agreements.
- Identify hardships Vermonters have endured due to non-compete agreements and whether it's caused any to move out of State or lose their livelihood.
- Identify areas where non-compete agreements are appropriate.
- Provide any other information you feel is relevant to the regulation of non-compete agreements.

MEMBERSHIP

Members of the working group include:

1. Jessa Barnard, Vermont Medical Society
2. Austin Davis, Lake Champlain Chamber of Commerce
3. Chritopher D'Elia, Vermont Bankers Association
4. Jamie Feehan, Primmer Piper Eggleston & Cramer PC
5. Eric Jones, Vermont Bar Association Representative
6. Maggie Lenz, Atlas Government Affairs representing Vermont Retailers & Grocers Association
7. Adam Locklin, Vermont Technology Alliance
8. Justin McCabe, OnLogic
9. David Mickenberg, Mickenberg Dunn & Smith
10. Megan Sullivan, Vermont Chamber of Commerce
11. Dylan Zwicky, Leonine Public Affairs

Other participants included:

1. Representative Herb Olson
2. Matthew Musgrave, The Associated Builders & Contractors NH/VT
3. Neil Groberg, Groberg Mediation

REPORT

The working group met on three occasions via zoom, September 3, October 6, and October 29. Minutes were kept for each meeting and are available if the Committee wishes to see them. Representative Olson joined the working group for the October 6 meeting at the request of Chairman Marcotte.

What follows is a summary of our discussions as they relate to the topics below.

1. **What is the current case law on the enforceability of non-compete agreements in Vermont and at the federal level?**

   In order to address the question, the working group looked at two reports put together by Walter E. Judge of Downs Rachlin Martin in 2021 and the Vermont Bar Association Law and Employment Law Section in 2022. The documents will be made available to the Commerce Committee, but what follows is a brief summary of statements related to this question. Again, both entities are credited with the content. Since these reports are three and four years old, the Commerce Committee may want to request legislative counsel perform a review of more recent court cases.

   DRM
   Under Vermont case law, a non-compete agreement must be reasonable and justified. Vermont courts enforce non-compete agreements unless they are found to be either:

   - Contrary to public policy.
   - Unnecessary for the protection of the employer.
   - Unnecessarily restrictive of the rights of the employee.

   The court also considers the subject matter of the contract and the circumstances and conditions under which it is to be performed.

   Vermont Bar Association Law and Employment Section
   Vermont courts have developed a body of common law regarding restrictive covenants, most notably non-compete agreements. A brief summary of the common law is stated here.

   When asked to enforce covenants not to compete, Vermont courts generally "proceed with caution, since such 'restraints run counter to that public policy favoring the right of individuals to freely engage in desirable commercial activity." *Roy's Orthopedic, Inc. v. Lavigne*, 142 Vt. 347, 350 (1982), quoting *Vermont Electric Supply Co., Inc. v. Andrus*,

132 Vt. 195, 198 (1974). Any such "restrictions on doing business or on the exercise of an individual's trade or talent are subject to scrutiny for reasonableness and justification." *Andrus*, 132 Vt. at 198. Restrictive covenants may not protect employers against ordinary competition. *See Summits 7, Inc. v. Kelly,* 2005 VT 97.

A restrictive covenant in an employment context will be enforced unless it is: (1) "contrary to public policy"; (2) "unnecessary for protection of the employer"; or (3) "unnecessarily restrictive of the rights of the employee, with due regard being given to the subject matter of the contract and the circumstances and conditions under which it is to be performed." *Andrus*, 132 Vt. at 198; *see also Roy's Orthopedic*, 142 Vt. at 350; *Summits 7,* 2005 VT 97.

In addition, to be enforceable, a covenant not to compete must be reasonable in scope and "narrowly tailored in terms of geographical, temporal, and subject matter restrictions to protect the employer's legitimate interests." *Summits 7*, 2005 VT 97,. Under Vermont law, a non-compete's duration must be no greater than necessary to protect the employer's business interests. *Dyar Sales & Mach. Co. v. Bleiler*, 106 Vt. 425 (1934).

Under the common law, continued at-will employment is sufficient consideration to support a restrictive covenant. *Summits 7*, 2005 VT 97.

The Vermont Supreme Court has described the history and current standards for reviewing non-compete agreements as follows:

> The common-law policy against contracts in restraint of trade is longstanding and firmly established, dating back to the time when the apprenticeship system ruled. In a relatively immobile society where workers entered skilled trades by serving in apprenticeships, covenants that prevented those workers from competing with their former employers had the potential to destroy a worker's livelihood or to bind that worker to his master for life. With the onset of the industrial revolution and at-will employment relationships, modern realities have led courts to allow noncompetition agreements as long as they are narrowly written to protect the employers' legitimate interests. Courts continue to carefully scrutinize noncompetition agreements, however, particularly with respect to employment contracts, which often result from unequal bargaining power between the parties.
>
> The modern approach to reviewing restrictive covenants is one of reasonableness. Courts seek to balance the employer's interest in protecting its business and investments, the employee's interest in pursuing a desired occupation, and the public's interest in the free flow of commerce.

The working group did not review any federal case law pertaining to non-competes.

2. **Provide the current or proposed federal regulation of non-compete agreements in employment contracts.**

In the spring of 2024, the Federal Trade Commission voted to adopt a new rule pertaining to non-compete agreements. The rule, which some would say was an outright prohibition, was designed to reduce the use and enforceability of such agreements along with non-solicitation agreements, except in very rare circumstances. An intended consequence of the rule was to also eliminate state-by-state regulations and common law decisions.

The rule, which was set to go into effect on September 4, 2024, was immediately challenged in Federal Court and in August 2024, the court entered an injunction to prohibit the rule from being implemented. As a result, the FTC filed an appeal with the Fifth Circuit Court of Appeals.

Under the new Administration, the FTC in late summer of 2025, decided to withdraw its notice of appeal resulting in the Fifth Circuit dismissing the case. The FTC has indicated they will address non-compete complaints on a case-by-case basis.

The following provisions were contained in the FTC rule:

- Senior executive exception if they were under a non-compete agreement prior to the rule going into effect, along with a wage threshold of $151,164.
- Sale of business exception, or sale of substantially all the assets.
- Franchise exception
- No impact on court case initiated prior to the rule.
- Notice to the employee subject to the non-compete

Here is a link to the FTC rule:
https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete-rule.pdf

3. **Summarize how other states are regulating non-compete agreements.**

In order to address this question, the working group conducted a web search and found two sites that summarize what other states have implemented for non-compete statutes. Our reference of the sites is not an endorsement of either organization.

It would appear, as of July 2025, six states have enacted a ban on non-compete agreements. They include California, Montana, Minnesota, Oklahoma, North Dakota (except for sale of business), and Wyoming (limited exceptions for trade secrets or executive management). Florida is the only state with no restrictions on non-competes. All other states have partial restrictions in place, common law or otherwise, which might be based on salary thresholds, job duties, geographic scope, or time duration.

For example, the following states have salary requirements:

- Colorado $123,750
- Washington, D.C. – $154,200

- Illinois – $75,000
- Maryland – $46,800
- Maine – $60,240
- New Hampshire – $30,160
- Oregon – $113,241
- Rhode Island – $37,650
- Virginia – $73,320
- Washington – $120,559

Some states refer to a reasonableness standard, but do not define what that means.

Here are the website links:
https://frostbrowntodd.com/the-non-compete-agreement-landscape-in-2025/

https://www.paycor.com/resource-center/articles/non-compete-agreement-by-state/#:~:text=Which%20States%20Have%20Banned%20Non,certain%20industries%20or%20income%20thresholds

4. **Identify hardships Vermonters have endured due to non-compete agreements and whether it's caused any to move out of State or lose their livelihood.**

The working group had considerable discussion about how big a problem non-compete agreements are in Vermont. We communicated with the courts to see if they had any data regarding the number of cases over the last five years but did not hear back. We also spoke with the Vermont Bar Association to see if they track any data which they do not.

Some members of the working group shared anecdotal stories about non-compete agreements impacting low wage workers. For example: sub shop workers, or bakers. There was also mention of healthcare workers who are subject to non-compete agreements. This raises broader policy questions regarding staffing shortages, traveling nurses, and a patient's desire to follow their healthcare provider if the provider leaves their current employment.

There is also a body of common law that has developed over the years, but the comment was made about how many cases don't go to court because the employee can't afford to challenge the agreement.

5. **Identify areas where non-compete agreements are appropriate.**

The working group discussed whether a ban on non-competes was appropriate or whether they should be allowed under Vermont statute. Two members expressed support for a complete ban but may be open to limitations set out in statute. Others in the working group support the use of non-competes with reasonableness standards and language that tracks what has already been decided under common law.

H.205 identifies a list of exceptions which members of the working group are generally supportive of. Again, we need to keep in mind that such support will depend on what actions are taken by the legislature. The exceptions include sale of all or substantially all of the ownership interest; dissolution of a partnership; dissolution of a limited liability company; and a severance agreement that meets reasonableness standards.

The working group also agrees with language in H.205 that defines what is not considered a non-compete agreement. For example, agreements that protect trade secrets or confidential business information. We recommend the Committee also refer to the Downs Rachlin Martin document and the Vermont Bar Association report to see how Vermont courts have ruled on non-compete agreements and what is deemed appropriate.

6. Provide any other information you feel is relevant to the regulation of non-compete agreements.

The working group conducted a review of H.205 with the goal of identifying areas of agreement, disagreement, and offering suggestions for the House Commerce Committee to consider. Pertaining to the areas of disagreement, this report attempts to present the differing views.

A. Should non-compete agreements be allowed:
    a. All but two of the working group members support the utilization of non-compete agreements in Vermont with the understanding that statutory language could help to eliminate areas of uncertainty and misuse. There is a need to strike a balance between employer and employee concerns.
    b. Those who are opposed to non-compete agreements due to the impact on employees separating from their job, support the ban that was developed by the Federal Trade Commission.
    c. Non-compete agreements in the healthcare industry present some unique challenges due to broader policy issues being debated in Vermont. For example, the impact on healthcare access if traveling nurses or licensed practitioners are subject to non-compete agreements. A representative from health care on the working group distributed legislative language specific to prohibiting the use of non-competes for licensed health care providers, which is available upon request. None of the working group members opposed further exploration of the use and regulation of non-competes in healthcare. There is also concern about the impact of the current non-solicitation language in H.205 on healthcare and the need to address stay or pay provisions related to healthcare provider training.
    d. There was also some discussion around how a statute in Vermont would apply to an employee that works for an out-of-state company. Again, traveling nurses were used as an example.

B. Appropriate and inappropriate uses of non-competes:
    a. Some members of the working group feel non-compete agreements are being used judiciously in Vermont, they are not taken lightly.

b. There is a body of common law that demonstrates that when there is a disagreement between the parties, court proceedings have been initiated. However, that is not true in every case, and it would be difficult to determine how many employees have a concern but lack the capacity to go to court.
c. Non-compete agreements are appropriate when dealing with trade secrets, proprietary information, client lists, intellectual property, and strategic initiatives. There was also discussion about including recipes and the method/process for producing the food product. To our knowledge, the issue of recipes and method/process have not been challenged in court.
d. Inappropriate uses of non-compete agreements tend to focus on certain wage levels and the tasks the employee is performing. The example given was non-compete agreements in the case of sandwich shops. All agreed, the use of non-competes seemed inappropriate, but questioned if that had more to do with a franchise agreement.

C. Wage threshold:
    a. Members of the working group agreed that a wage threshold makes sense. There was also general agreement that wages should not be the sole determining factor. Many jobs pay a lower wage, but the employee has access to business information that needs to be protected. For example, a small tech company or start-up business may not have the capacity to pay a high wage, but the employee has access to sensitive business information. If a wage threshold is set too high, it would eliminate the legitimate use of a non-compete agreement.
    b. It was suggested that a two-part test, wage and job function be considered in the bill to address such situations.
    c. The group discussed and agreed that non-compete agreements are appropriate when highly compensated employees working in critical positions with access to proprietary information are involved. However, again what is the right wage threshold.
    d. It was suggested that Vermont use $156,000 as recommended by the FTC. Others who disagreed stated it needs to be a number that is much lower. A salary range of between $50,000 and $70,000 was offered. The group could not agree on a number.
    e. Other suggestions included an inflationary factor tied to a number set in statute and perhaps looking at exempt versus non-exempt employees.

D. The working group had a brief discussion about the definition of trade secrets and what is covered under the existing Uniform Trade Secrets Act in Vermont. Is it sufficient to protect a business's proprietary information? Our group did not review the UTSA, or any federal regulations regarding trade secrets. One member expressed concern about going beyond what current exists in statute.

E. Disclosure of agreement and timing:
    a. There was general agreement that non-compete agreements, when appropriate, should be provided at the time an employment offer is made. There was also general agreement on allowing three days for consideration of the agreement.
    b. However, there are situations when an employee is being promoted, taking on a role giving them access to sensitive business information. In those circumstances non-compete agreements should be provided at the time the promotion is being offered. H.205 is silent in this area.
    c. H.205 does not define employee or address independent contractors. Those are two issues the Commerce Committee should consider.
    d. H.205 would also prohibit an employer from rescinding a non-compete agreement until three days pass. The group felt the employer should have the right to rescind the offer in the event information became available that would disqualify the individual from being hired or promoted.

F. Length of time for the non-compete agreement:
    a. The working group briefly discussed the timeframe for non-compete agreements. While each employment circumstance is unique, many felt that one year seemed to make sense. No final recommendations were agreed upon, but the group suggests the Committee look at the standards set out in common law.

G. Geographic application:
    a. The working group discussed what would be the right geographic limitation for a non-compete agreement. No consensus was reached because the circumstances surrounding the employer/employee, the type of business and job functions all have an impact on what is reasonable.
    b. Existing common law which has ruled on a mile radius, countywide, statewide, and national application, supports our conclusion.

H. Non-solicitation:
    a. There was agreement that non-solicitation agreements are different from non-compete agreements.
    b. Non-solicitation agreements are a valid way for an employer to protect their business interests.
    c. That said, if a consumer wishes to voluntarily move with their service provider, they should have a right to do so.
    d. The working group also recommends removing the words “or transact” from the definition of non-solicitation agreement. There is a concern that if a customer voluntarily moves with the service provider and transacts business, that would be a violation of the statute.

I. Exclusions to the definition of non-compete agreements:
    a. While severance packages are addressed in H.205, the bill is silent on other forms of compensation, which some believe should be exempt. Such incentive packages are used as a form attracting and retaining employees.

b. Non-qualified deferred compensation plans (IRS 409A Plan): A non-qualified deferred compensation (NQDC) plan allows an employee to earn wages, bonuses, or other compensation in one year but receive the earnings and defer the income tax to a later year. Doing this provides income for the future (often after they've left the workforce). A common condition of a NQDC is refraining from competing with the company or providing advisory services after retirement. Violating the conditions in the law triggers penalties. All of the deferred compensation becomes immediately taxable.
c. Forfeiture for competition agreements that offer the ability to limit an employee's post-employment competition through an agreement that states an employee who competes will forfeit a certain benefit, such as a stock incentive, deferred compensation. In other words, individuals get to choose between accepting compensation, which will require limitations on free activities, or forgoing such compensation but remaining free to compete.

J. Void all existing non-compete agreements:
    a. The working group was unanimous in that voiding all existing non-compete agreements would most likely be a violation of contract law and subject H.205 to a legal challenge.
    b. That said, one member of the working group wanted to better understand the legal implications.
    c. Vermont courts have dealt with non-compete cases and developed a body of common law. There does not appear to be any overwhelming evidence of misuse.
    d. Application of the law prospectively makes sense.

K. Stay or pay provisions, tuition reimbursement:
    a. There was considerable discussion about stay or pay provisions as part of any employment agreement. It is unclear whether stay or pay provisions are part of non-compete agreements, but if they are, members of the working group support the ability of an employer to recapture funds that have been expended to train a new hire or existing employee.
    b. Such a provision would also be subject to disclosure, so the prospective or current employee were clear on the expectations if there was a separation of employment.
    c. Stay or pay provisions would not be subject to a wage threshold.

In conclusion, the working group had a robust discussion on many issues raised concerning non-compete agreements. While there is a lack of data informing us on how big a problem exists beyond what the courts have already ruled on, many would agree that some statutory language would be beneficial. Any legislative approach must strike a balance between an employer's right to protect their business interests and the employee's right to earn a living if there is a separation of employment.