

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 1 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. 21 V.S.A. § 495o is added to read:

8 § 495o. AGREEMENTS NOT TO COMPETE; PROHIBITION;

9 EXCEPTIONS

10 (a) Except as otherwise provided by this section, an agreement not to  
11 compete or any other agreement that restrains an individual from engaging in a  
12 lawful profession, trade, or business is prohibited.

13 (b) Notwithstanding subsection (a) of this section, a person may enter into  
14 an agreement not to compete with a business entity or a similar agreement that  
15 restrains the person from engaging in a lawful profession, trade, or business  
16 within a specified geographic area in which the business entity carries on its  
17 business under the following circumstances:

18 (1) Sale of a business or interest in a business. A person may enter into  
19 an agreement not to compete in relation to:

20 (A) with respect to a business entity, the sale of:

1                   (i) all or substantially all of the person’s ownership interest in the  
2                   business entity or its operating assets; or

3                   (ii) all or substantially all of the person’s ownership interest in a  
4                   subsidiary or division of the business entity or the operating assets of a  
5                   subsidiary or division of the business entity;

6                   (B) with respect to a partnership in which the person is a partner, the  
7                   dissolution of the partnership or the dissociation of the person from the  
8                   partnership; or

9                   (C) with respect to a limited liability company in which the person is  
10                  a member, the dissolution of the limited liability company or the termination of  
11                  the person’s interest in the limited liability company.

12                  (2) Agreements supported by consideration. An employee may enter  
13                  into an agreement not to compete with a business entity at the commencement  
14                  of employment or in relation to a promotion or a substantial change in the  
15                  employee’s job responsibilities if the agreement satisfies all of the following  
16                  requirements:

17                  (A) The agreement is supported by garden leave, a nonqualified  
18                  deferred compensation plan funded solely by the employer, or other similar  
19                  consideration that is mutually agreed to by the employer and employee and is  
20                  specified in the agreement.

1           (B) The agreement is in writing and signed by the employer and the  
2           employee.

3           (C)(i) If the agreement is entered into in relation to the  
4           commencement of employment, it is provided to the employee with the formal  
5           offer of employment or 10 days before the commencement of employment,  
6           whichever is earlier; or

7           (ii) if the agreement is entered into in relation to a promotion or a  
8           substantial change in the employee’s job responsibilities, it is provided to the  
9           employee at least 10 days before it will take effect.

10           (D) The agreement states that the employee has the right to consult  
11           with an attorney prior to signing the agreement.

12           (E) The limitations set forth in the agreement are reasonable in time,  
13           geographical area, and the scope of activity to be restrained.

14           (c)(1) Nothing in this section shall be construed to prohibit an agreement  
15           that prohibits the disclosure of trade secrets as defined in 9 V.S.A. § 4601 or a  
16           nondisclosure agreement that protects confidential business information that  
17           does not constitute a trade secret.

18           (2) Nothing in this section shall be construed to prohibit a  
19           nonsolicitation agreement between an employer and an employee provided that  
20           the limitations set forth in the agreement are reasonable in time, geographical  
21           area, and the scope of activity to be restrained.

1           (d) Any provision of an employment contract or other agreement entered  
2           into on or after July 1, 2019 that violates the provisions of this section shall be  
3           void and unenforceable.

4           (e) As used in this section:

5                   (1) “Business entity” includes any partnership, limited liability  
6                   company, corporation, cooperative, or mutual benefit enterprise.

7                   (2) “Garden leave” means a provision in a noncompete agreement  
8                   pursuant to which an employer agrees to pay an employee on a pro rata basis  
9                   during the term of the agreement an amount equal to at least 50 percent of the  
10                   employee’s highest annualized base salary during the two years prior to his or  
11                   her termination of employment with the employer.

12                   (3) “Nonsolicitation agreement” means an agreement between an  
13                   employer and an employee pursuant to which the employee agrees not to:

14                           (A) solicit or recruit the employer’s employees; or

15                           (B) solicit or transact business with customers or clients of the  
16                   employer who were customers or clients while the employee was employed by  
17                   the employer.

18           Sec. 2. EFFECTIVE DATE

19           This act shall take effect on July 1, 2019.

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

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Representative \_\_\_\_\_

FOR THE COMMITTEE

DRAFT