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H.187

Introduced by Representative Kornheiser of Brattleboro

Referred to Committee on

Date:

Subject: Labor; employment practices; agreements not to compete

Statement of purpose of bill as introduced: This bill proposes to restrict agreements that prohibit individuals from competing with their former employers following the conclusion of their employment.

An act relating to agreements not to compete

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 495o is added to read:

§ 495o. AGREEMENTS NOT TO COMPETE; PROHIBITION;

EXCEPTIONS

(a) Except as otherwise provided by this section, agreements not to compete are prohibited.

(b) Notwithstanding subsection (a) of this section, a key employee may enter into an agreement not to compete with an employer at the commencement of employment or in relation to a promotion or a substantial change in the employee's job responsibilities if the agreement satisfies all of the following requirements:

1 (1)(A) If the agreement is in relation to a promotion or a substantial
2 change in the employee's job responsibilities:

3 (i) the employee receives additional compensation in relation to
4 the promotion or substantial change in the employee's job responsibilities; and

5 (ii) the agreement not to compete is supported by substantial
6 consideration that is specified in the agreement and is commensurate with the
7 burden imposed on the employee by the agreement.

8 (B) If the agreement is in relation to the commencement of
9 employment, the agreement not to compete is supported by substantial
10 consideration that is specified in the agreement and is commensurate with the
11 burden imposed on the employee by the agreement.

12 (2) The agreement is in writing and signed by the employer and the
13 employee.

14 (3)(A) If the agreement is entered into in relation to the commencement
15 of employment, it is provided to the employee with the formal offer of
16 employment or 10 calendar days before the commencement of employment,
17 whichever is earlier.

18 (B) If the agreement is entered into in relation to a promotion or a
19 substantial change in the employee's job responsibilities, it is provided to the
20 employee at least 10 calendar days before it will take effect.

1 (4)(A) The agreement states that the employee has the right to consult
2 with an attorney prior to signing the agreement and that the employer shall
3 reimburse the employee for the cost of consulting with an attorney for the
4 purpose of reviewing the agreement and obtaining legal advice.

5 (B) The agreement shall, at a minimum, provide that the employer
6 shall reimburse the employee for up to two hours of attorney time.

7 (5) The limitations set forth in the agreement are reasonable in time,
8 geographical area, and the scope of activity to be restrained.

9 (c) Nothing in this section shall be construed to prohibit:

10 (1) an agreement that prohibits the disclosure of trade secrets as defined
11 in 9 V.S.A. § 4601 or a nondisclosure agreement that protects confidential
12 business information that does not constitute a trade secret;

13 (2) a nonsolicitation agreement between an employer and an employee,
14 provided that the limitations set forth in the agreement are reasonable in time,
15 geographical area, and the scope of activity to be restrained; or

16 (3) an individual from entering into an agreement not to compete in
17 relation to:

18 (A) the sale of all or substantially all of the individual's ownership
19 interest in:

20 (i) a business or its operating assets; or

1 (ii) a subsidiary or division of a business or the operating assets of
2 a subsidiary or division of a business;

3 (B) the dissolution of a partnership in which the individual is a
4 partner or the dissociation of the individual from a partnership; or

5 (C) the dissolution of a limited liability company in which the
6 individual is a member or the termination of the individual's interest in a
7 limited liability company.

8 (d) Any provision of an employment contract or other agreement entered
9 into on or after July 1, 2021 that violates the provisions of this section shall be
10 void and unenforceable.

11 (e) As used in this section:

12 (1) "Agreement not to compete" means any agreement between an
13 individual and a business that restrains the individual from engaging in a
14 lawful profession, trade, or business.

15 (2) "Executive, administrative, or professional employee" means an
16 employee who is exempt from the wage and hour provisions of the Fair Labor
17 Standards Act pursuant to 29 U.S.C. § 213(a)(1) and is employed in a bona
18 fide executive, administrative, or professional capacity, as defined pursuant to
19 29 C.F.R. Part 541.

20 (3) "Key employee" means an individual who:

21 (A) is an executive, administrative, or professional employee; and

1 (B) earns wages or a salary equal to at least one and one-half times
2 the Vermont average annual wage.

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

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

6 (B) solicit or transact business with customers or clients of the
7 employer who were customers or clients while the employee was employed by
8 the employer.

9 (5) “Vermont average annual wage” means the most recent annual mean
10 wage for Vermont published by the U.S. Bureau of Labor Statistics.

11 Sec. 2. EDUCATION AND OUTREACH

12 The Secretary of Commerce and Community Development, the Attorney
13 General, and the Commissioner of Labor shall, on or before October 15, 2021,
14 jointly develop and make available on the Agency of Commerce and
15 Community Development’s, the Attorney General’s, and the Department of
16 Labor’s websites information and materials to educate and inform employers
17 and employees about the provisions of 21 V.S.A. § 495o.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on July 1, 2021 and shall apply to agreements
20 entered into on or after that date.