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## HOUSE BILL NO. 1187

Offered January 18, 2012

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:4, relating to the prohibition of noncompetition agreements.

Patron—Hope

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:4 as follows:

§ 40.1-28.7:4. Noncompetition agreements.

A. As used in this section, unless the context requires otherwise:

"Business entity" means any (i) partnership, including a limited partnership or a limited liability partnership, (ii) limited liability company, or (iii) stock corporation.

"Owner of a business entity" means any (i) partner, in the case of a business entity that is a partnership; (ii) member, in the case of a business entity that is a limited liability company; or (iii) shareholder, in the case of a business entity that is a stock corporation.

"Ownership interest" means (i) partnership interest, in the case of a business entity that is a partnership, including a limited partnership or a limited liability partnership; (ii) membership interest, in the case of a business entity that is a limited liability company; or (iii) share, in the case of a business entity that is a stock corporation.

"Subsidiary" means any business entity over which the selling business entity has voting control, or from which the selling business entity has a right to receive a majority share of distributions upon dissolution or other liquidation of the business entity, or has both voting control and a right to receive these distributions.

B. Except as provided in this section, any contract that serves to restrict an employee or former employee from engaging in a lawful profession, trade, or business of any kind is unlawful.

C. Any person who sells the goodwill of a business, or any owner of a business entity selling or otherwise disposing of all interest in the business entity, or any owner of a business entity that sells (i) all or substantially all of its operating assets together with the goodwill of the business entity; (ii) all or substantially all of the operating assets of a division or a subsidiary of the business entity together with the goodwill of that division or subsidiary; or (iii) all of the ownership interest of any subsidiary, may agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold, or that of the business entity, division, or subsidiary, has been carried on, so long as the buyer, or person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein.

D. In the case of a dissolution of partnership or a dissociation of the partner from the partnership, any partner may, upon or in anticipation, agree to refrain from carrying on a similar business within a specified geographic area where the partnership business has been transacted, so long as any other member of the partnership, or any person deriving title to the business or its goodwill from any such other member of the partnership, carries on a like business therein.

E. In the case of a dissolution of a limited liability company, any member may, upon or in anticipation of the termination of his interest in the limited liability company, agree to refrain from carrying on a similar business within a specified geographic area where the limited liability company business has been transacted, so long as any other member of the limited liability company, or any person deriving title to the business or its goodwill from any such other member of the limited liability company, carries on a like business therein.

F. Nothing in this section shall serve to limit the creation or application of nondisclosure agreements intended to prohibit the sharing of certain information, including but not limited to trade secrets and proprietary or confidential information.

INTRODUCED

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