



An Act Concerning Noncompete Agreements.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) For purposes of this section:

2 (1) "Person" means any one or more individuals, partnerships,
3 associations, corporations, limited liability companies, business trusts,
4 legal representatives or any organized group of persons.

5 (2) "Employer" means any person engaged in business who has
6 employees.

7 (3) "Employee" means any person engaged in service to an employer
8 in a business of the employer.

9 (4) "Noncompete agreement" means any agreement or any
10 provision in an agreement between an employer and employee under
11 which the employee agrees that the employee shall not compete with
12 the employer in providing products, processes or services that are
13 similar to the employer's products, processes or services in any
14 geographic area or for any period of time after termination of
15 employment.

16 (b) (1) A noncompete agreement entered into on or after the
17 effective date of this section shall be enforceable only if it is reasonable.
18 In determining whether such an agreement is reasonable, the court

19 shall consider: (A) The length of time the restriction operates; (B) the
20 geographic area covered; (C) the fairness of the protection accorded to
21 the employer; (D) the extent of the restraint on the employee's
22 opportunity to pursue the employee's occupation; and (E) the extent of
23 interference with the public's interests.

24 (2) Notwithstanding the provisions of subdivision (1) of this
25 subsection:

26 (A) No court or other forum in this state shall enforce a noncompete
27 agreement entered into on or after the effective date of this section
28 against an employee in the broadcasting industry, which agreement
29 restricts the right of such employee to obtain employment in such
30 industry within a specified geographic area for a specified period of
31 time following termination of employment or expiration of an
32 employment contract or agreement.

33 (B) No court or other forum in this state shall enforce a noncompete
34 agreement entered into on or after the effective date of this section
35 against an employee who is terminated, unless the termination is due
36 to the employee's wilful misconduct in the course of employment or
37 for just cause, as those terms are defined in subsection (a) of section 31-
38 236 of the general statutes, as amended.

39 (C) No court or other forum in this state shall enforce a noncompete
40 agreement entered into on or after the effective date of this section
41 unless:

42 (i) The noncompete agreement is entered into at the time the
43 employee accepts employment, provided the employer (I) has notified
44 the employee, in writing, before the employee accepts employment,
45 that such employment is contingent on the employee signing the
46 noncompete agreement, and (II) has given the employee a copy of the
47 noncompete agreement to be signed before the employee accepts such
48 employment;

49 (ii) The noncompete agreement is entered into at the time the

50 employee accepts a bona fide promotion or advancement with the
51 employer, provided the employer (I) has notified the employee, in
52 writing, before the employee accepted employment, that future
53 promotions or advancements may be contingent on the employee
54 signing a noncompete agreement, and (II) has given the employee a
55 copy of the noncompete agreement to be signed before the employee
56 accepts such promotion or advancement. For purposes of this
57 subparagraph, a bona fide promotion or advancement does not
58 include continued employment in the employee's current position or a
59 change in the employee's current position unless such change includes
60 a substantial change in duties and a substantial increase in salary; or

61 (iii) The noncompete agreement is entered into at the time of a
62 substantial change in circumstances of the employer, including, but
63 not limited to, the sale of all or substantially all of the employer's
64 assets, the employer's acceptance of significant financing from a third
65 party or the employer's entering into a partnership, joint venture or
66 other such business arrangement with another person, provided the
67 employer (I) has notified the employee, in writing, before the
68 employee accepted employment, that continued employment
69 following a substantial change in the circumstances of the employer
70 may be contingent on the employee signing a noncompete agreement;
71 (II) has given the employee a copy of the noncompete agreement to be
72 signed before the employee accepts such continued employment; and
73 (III) the employee's execution of a noncompete agreement is necessary
74 for the employer to effectively respond to such substantial change in
75 circumstances.

76 (D) No court or other forum in this state shall enforce a noncompete
77 agreement entered into on or after the effective date of this section
78 unless such agreement includes a specific reference to this section and
79 recites the requirements for enforceability set forth in this subsection.

80 (c) Notwithstanding any provision in a noncompete agreement, in
81 any action to determine the enforceability of such agreement, each
82 party to the action shall be responsible for its own court costs,

83 including attorney's fees, except that (1) the court may, in its discretion,
84 award costs and attorney's fees to the prevailing party, and (2) in the
85 case of an individual in the broadcasting industry, the employer shall
86 be liable for a prevailing employee's reasonable attorney's fees and
87 costs.

88 (d) Nothing in this section shall be construed to restrict the right of
89 an employer to protect its trade secrets or proprietary information in
90 accordance with other applicable state or federal laws.

91 (e) Nothing in this section shall be construed to prohibit or render
92 void any agreement between an employer and the exclusive
93 bargaining representative of its employees.

LAB Committee Vote: Yea 9 Nay 4 JFS C/RJUD