
OLR Bill Analysis

sHB 6913

AN ACT CONCERNING COVENANTS NOT TO COMPETE.

SUMMARY

This bill sets limits on the use of covenant not to compete provisions in employee contracts. Under the bill, a “covenant not to compete” (i.e., non-compete clause) means a contract, provision, or agreement that restrains an employee from engaging in any profession, occupation, trade, or business of any kind in any geographic area for any period of time after the termination of employment.

The bill applies to non-compete clauses entered into, amended, extended, or renewed on or after June 30, 2019.

Current law, exempted by the bill, establishes prohibitions regarding non-compete clauses in employment agreements for broadcast employees and, in certain situations, security guards (see BACKGROUND). Another current law sets specific limits on physician non-compete agreements and appears to be superseded by the bill, although the two have similar provisions (CGS § 20-14p).

EFFECTIVE DATE: Upon passage

NON-COMPETE CLAUSES

Limitations

Under the bill, non-compete clauses are prohibited for any employees who do not earn more than twice the state’s minimum wage.

In addition to the wage threshold, the bill requires that in order to be legal a non-compete clause must:

1. not restrict the employee’s competitive activities for more than one year after the employee’s termination;

2. be necessary to protect the employer's legitimate business interest;
3. be reasonably limited in time, geographic scope, and employment restrictions as necessary to protect the business interest; and
4. otherwise be consistent with state law and public policy.

The bill provides an exception to the one year limit by allowing the non-compete clause to be extended for up to an additional year if it is part of an agreement in which the employer pays the employee his or her salary plus benefits for at least one year. Base salary and benefits include (1) the wages earned in the prior calendar year, excluding overtime or bonuses and (2) health insurance and other fringe benefits received in the prior calendar year.

Under the bill, the party seeking to enforce a non-compete clause has the burden of proof in any proceeding.

Unenforceable Clause

In addition to the requirements listed above, a non-compete clause entered into, amended, extended, or renewed on or after July 1, 2019, is not enforceable if:

1. the employment or contractual relationship is terminated by the employer;
2. the employment or contractual relationship is terminated by the employee for good cause attributable to the employer; or
3. the employment contract or agreement was not made (a) in anticipation of a sale of the goodwill of a business or all of the seller's ownership interest in a business, or (b) as part of a partnership or ownership agreement and the contract or agreement expires and is not renewed, unless, prior to the expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions.

Contract Process

Each non-compete clause that is entered into, amended, extended or renewed on or after July 1, 2019, must:

1. be provided to the employee at least 10 business days prior to the signing date;
2. expressly state that the employee has the right to consult with legal counsel before signing; and
3. be signed by the employee and the employer.

Severability

Under the bill, the remaining provisions of any contract or agreement that includes a non-compete clause that is rendered void and unenforceable, in whole or in part, under the bill's provisions will remain in full force and effect, including provisions that require the payment of damages resulting from any injury suffered by reason of termination or separation of employment.

EXISTING NON-COMPETE LAWS

The bill excludes the existing laws that address non-compete clauses for broadcasters and security guards from its provisions (see BACKGROUND).

It does not exclude the existing law that limits non-compete clauses for physicians, but the bill and the physician law contain many of the same provisions. See Table 1 for a comparison.

Table 1: Non-Compete Provision Comparison

<i>Limitation Provision</i>	<i>Physicians Law (CGS § 20-14p)</i>	<i>Under the Bill</i>
Time limit	One year	One year, but second year allowed if certain conditions are met
Employer business	Necessary to protect a	Same provision as physicians

interests	legitimate business interest	law
Geographic restriction	No more than 15 miles from the physician's primary worksite	Reasonably limited in scope
Must be otherwise consistent with the law and public policy	Provision included	Provision included
Clause not enforceable: Termination by employer	Employer terminates the employment or contractual relationship without cause	Employer terminates the employment or contractual relationship, regardless of cause
Clause not enforceable: Termination by employee	Not included	Employee terminates the employment or contractual relationship, for good cause

The law and the bill also provide that non-compete clauses are not enforceable when the employment contract or agreement was not made as part of a partnership or ownership agreement and such contract or agreement expires and is not renewed, unless, prior to the expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions.

But under the bill, a non-compete clause is also not enforceable if it was not made in anticipation of a sale of the goodwill of a business or all of the seller's ownership interest in a business.

BACKGROUND

Prohibitions on Non-compete Employment Agreements

The law prohibits a contract for services between a broadcasting industry employer and a broadcast employee from containing a provision that the employee, among other things, refrain from working in a specified geographic area for a specified period after ending employment (CGS § 31-50a).

The law also prohibits an employer from requiring an employee who is a security guard to agree to a non-compete agreement if (1) it

prohibits the employee from having the same or a similar job at the same location and (2) the job is for another employer or the person is self-employed. The prohibition does not apply if the employer proves that the employee has obtained the employer's trade secrets (CGS § 31-50b).

Related Bill

SB 377, reported favorably by the Public Health Committee, prohibits physician non-compete agreements entered into, amended, or renewed on or after July 1, 2019.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/21/2019)