



House of Representatives

General Assembly

File No. 474

January Session, 2019

Substitute House Bill No. 6913

House of Representatives, April 8, 2019

The Committee on Labor and Public Employees reported through REP. PORTER, R. of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING COVENANTS NOT TO COMPETE.

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

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
2 section:

3 (1) "Base salary and benefits" means (A) wages, as defined in section
4 31-71a of the general statutes, earned over the course of the prior
5 calendar year, without consideration of any overtime or bonus
6 compensation, and (B) health insurance benefits and other fringe
7 benefits received by an employee over the course of the prior calendar
8 year;

9 (2) "Employee" includes any person suffered or permitted to work
10 by an employer;

11 (3) "Employer" has the same meaning as provided in section 31-71a
12 of the general statutes;

13 (4) "Covenant not to compete" means a contract, provision or
14 agreement that restrains an employee from engaging in any lawful
15 profession, occupation, trade, calling or business of any kind in any
16 geographic area of the state for any period of time after the termination
17 of employment;

18 (5) "Separation agreement" means an agreement accompanying the
19 termination or separation of employment without cause in which the
20 employee releases claims or potential claims against the employer.

21 (b) Except as provided in section 31-50a or 31-50b of the general
22 statutes, an employer may obtain from an employee a covenant not to
23 compete only if it (1) does not restrict the employee's competitive
24 activities for a period of more than one year following the termination
25 or separation of the employee; (2) is necessary to protect a legitimate
26 business interest of the employer; (3) is reasonably limited in time,
27 geographic scope and employment restrictions as necessary to protect
28 such business interest; (4) is consistent with this section, other law of
29 this state and public policy; and (5) is entered into by an employee
30 who receives compensation at an hourly rate of more than twice the
31 minimum fair wage as defined in section 31-58 of the general statutes.
32 The party seeking to enforce a covenant not to compete shall have the
33 burden of proof in any proceeding.

34 (c) A covenant not to compete that is entered into, amended,
35 extended or renewed on or after July 1, 2019, shall not be enforceable
36 against any employee if (1) such covenant was not made in
37 anticipation of a sale of the goodwill of a business or all of the seller's
38 ownership interest in a business, or as part of a partnership or
39 ownership agreement and such contract or agreement expires and is
40 not renewed, unless, prior to such expiration, the employer makes a
41 bona fide offer to renew the contract on the same or similar terms and
42 conditions; (2) the employment or contractual relationship is
43 terminated by the employer; or (3) the employment or contractual
44 relationship is terminated by the employee for good cause attributable
45 to the employer.

46 (d) A covenant not to compete that meets the requirements of
 47 subsections (b), (c) and (e) of this section shall not be invalid under this
 48 section based upon its duration of more than one year, but not longer
 49 than two years, following the termination of employment if it is a part
 50 of an employment agreement or a separation agreement under which
 51 the employer agrees to continue to compensate the employee with the
 52 employee's base salary and benefits for a period of not less than one
 53 year following the termination of employment.

54 (e) Each covenant not to compete that is entered into, amended,
 55 extended or renewed on or after July 1, 2019, shall (1) be provided to
 56 the employee not less than ten business days prior to the date of
 57 signing; (2) expressly state that the employee has the right to consult
 58 with counsel prior to signing; and (3) be signed by the employee and
 59 the employer.

60 (f) The remaining provisions of any contract or agreement that
 61 includes a covenant not to compete that is rendered void and
 62 unenforceable, in whole or in part, under the provisions of this section
 63 shall remain in full force and effect, including provisions that require
 64 the payment of damages resulting from any injury suffered by reason
 65 of termination or separation of employment.

66 (g) The provisions of this section shall apply to agreements or
 67 covenants entered into, renewed or extended on or after June 30, 2019.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

Statement of Legislative Commissioners:

Subsecs. (a)(1) and (b) to (f), inclusive, were rewritten for clarity and consistency, and Subsec. (a)(3) was rewritten to be consistent with existing statutory language.

LAB Joint Favorable Subst. -LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Labor Dept.	GF - Potential Cost	70,647	75,425
State Comptroller - Fringe Benefits ¹	GF - Potential Cost	29,999	31,068
Labor Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which limits the use of non-compete covenants in employee contracts, results in a potential General Fund cost of \$99,746 in FY 20 and \$106,493 in FY 21 to the Department of Labor (DOL), as well as a potential minimal revenue gain from civil penalties.

It is unknown how many employers use non-compete covenants; however any violations of the bill's provisions would likely carry a civil penalty.² Any complaints of violation would therefore require an investigation and potential administrative hearing. To the extent there are a substantial number of complaints, there is a cost of \$99,746 in FY 20 and \$106,493 in FY 21 associated with the salary and fringe benefits of one Wage Enforcement Agent.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

² Whether or not violations would actually carry a civil penalty ultimately depends on where the bill would be codified in statute if it were to pass.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The annualized ongoing revenue impact identified above would continue into the future subject to fluctuation in the number of potential civil penalties levied.

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 interests	Necessary to protect a legitimate business interest	Same provision as physicians 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)