
OLR Bill Analysis

sSB 906

AN ACT CONCERNING NONCOMPETE AGREEMENTS.

SUMMARY

This bill sets limits on the use of covenant not to compete provisions in employment contracts. Under the bill, a “covenant not to compete” (i.e., noncompete agreement) means a contract, provision, or agreement that restrains an employee from, or imposes penalties for, engaging in any kind of profession, occupation, trade, or business in any geographic area for a set time period after separation from employment. The bill excludes from this definition (1) nonsolicitation agreements that meet certain standards, (2) nondisclosure or confidentiality agreements, (3) agreements not to reapply with the same employer, and (4) any contract or agreement 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.

Under the bill, a noncompete agreement is enforceable only if specific requirements are met, including that the employee must earn at least three times the minimum wage.

The bill also sets limits on exclusivity agreements, which it defines as an agreement that imposes penalties on a worker for, or restrains a worker from, supplementing his or her income by working for another employer, working as an independent contractor, or being self-employed.

The bill applies to noncompete clauses and exclusivity agreements entered into, amended, extended, or renewed on or after July 1, 2021.

The bill’s provisions do not apply to noncompete clauses that existing law prohibits in employment agreements for physicians,

broadcast employees, and home health aides. It also sunsets, on June 30, 2021, a law that prohibits certain existing noncompete agreements for security guards.

EFFECTIVE DATE: July 1, 2021

NONCOMPETE AGREEMENT REQUIREMENTS

The bill (1) prohibits employers and contractors from requesting or requiring a worker (i.e., employee or independent contractor) to sign or agree to a noncompete agreement and (2) makes any such agreement unenforceable unless several conditions are met. A noncompete agreement is unenforceable if the employment or contractual relationship was terminated by the worker for good cause attributable to the employer or contractor.

To be enforceable, among other things, a noncompete agreement must:

1. only be applied to (a) exempt employees earning monetary compensation of more than three times the state minimum hourly wage or (b) workers who are independent contractors earning monetary compensation of more than five times the state minimum fair wage;
2. be limited to a period of no more than one year following the employee's termination or separation;
3. be necessary to protect the employer's legitimate business interest that could not reasonably be protected through less restrictive means, including a nondisclosure agreement, nonsolicitation agreement, or the business protections under the state Uniform Trade Secrets Act;
4. be no more restrictive than necessary to protect such business interest in terms of the agreement's duration, geographic scope, type of work, and type of employer;
5. not require the worker to submit to adjudication outside of the

state, or otherwise purport to deprive the worker of the bill's protections or benefits; and

6. not unreasonably interfere with the public's interests and be consistent with the bill's requirements, other state laws, and public policy.

Under the bill, "monetary compensation for exempt employees" means wages earned over the course of the prior calendar year, or portion of that year, for which the employee was employed, annualized based on the employment period and calculated as of the earlier of the (1) date enforcement of the noncompete agreement is sought or (2) date of separation from employment. For independent contractors, "monetary compensation" means payments for services rendered, annualized based on the period during which the contractor provided services and calculated as of the earlier of the (1) date enforcement is sought or (2) date of separation from employment.

Requirements Related to Signing the Agreement

To be enforceable, the noncomplete agreement must also:

1. be provided to the worker in writing no later than 10 business days prior to the earlier of (a) the deadline for accepting the offer of employment or the offer to enter into an independent contractor relationship or (b) the date the agreement is signed;
2. contain a statement of the worker's noncompete agreement rights (see below);
3. be signed by the worker and the employer or contractor separately from any other agreement underlying the relationship; and
4. be supported by sufficient consideration independent from continuation of the employment or contractor relationship, if the agreement is added to an existing employment or independent contractor relationship.

Statement of Worker's Rights

The bill requires any noncompete agreement to include a statement of the worker's rights that provides the following information:

1. not all noncompete agreements are enforceable,
2. noncompete agreements for workers and independent contractors earning less than the minimum stated in the bill are illegal,
3. the worker may contact the attorney general if the worker is subject to an illegal noncompete agreement, and
4. the worker has the right to consult legal counsel prior to signing the noncompete agreement.

OTHER GENERAL REQUIREMENTS

Under the bill, even if all the above conditions are met, a noncompete agreement is presumed unenforceable if it applies to (1) geographic areas in which the employee neither provided services nor had a material presence or influence within the last two years of employment or (2) types of work that the employee did not perform during the last two years of employment.

EXCEPTION TO THE DURATION LIMIT FOR NONCOMPETES

The bill allows a noncompete agreement to be enforceable for up to two years if the worker is paid his or her base salary and benefits, minus any outside compensation, for the entire period of the noncompete agreement.

EXISTING NONCOMPETE LAWS

The bill leaves noncompete laws in effect for three professions: (1) physicians, (2) broadcast employees, and (3) homemakers, companions, or home health aides. It creates an end date for another one (security guards), thus sunsetting existing limitations on the use of noncompete clauses in security guard employment agreements. (In practice, most security guards earn less than the wage threshold necessary to have a noncompete agreement, at least three times the

state hourly minimum wage.)

EXCLUSIVITY AGREEMENTS

The bill permits exclusivity agreements under certain conditions. It defines an “exclusivity agreement” as a contract or agreement entered into or renewed on or after July 1, 2021, that restrains a worker from, or imposes penalties on a worker for, supplementing his or her income by working for another employer, working as an independent contractor, or being self-employed.

An employer or contractor may request or require a worker to sign or agree to an exclusivity agreement only if the worker is an exempt employee earning more than three times the state’s minimum fair wage or is an independent contractor earning more than five times the state’s minimum fair wage.

The bill’s conditions do not apply when the worker supplementing his or her income by working for another employer, working as an independent contractor, or being self-employed would (1) imperil the safety of the worker, the worker's coworkers, or the public or (2) substantially interfere with the employer or contractor’s reasonable and normal scheduling expectations, which excludes on-call shift scheduling.

The bill specifies the exclusivity agreement provisions cannot be construed to alter an employee’s obligations to an employer under existing law, including the common law duty of loyalty and laws preventing conflicts of interest and any corresponding policies related to the obligations.

NONSOLICITATION AGREEMENTS

The bill specifies that nonsolicitation agreements are excluded from the definition of noncompete agreements only if they do not restrict a worker for more than a year and are not more restrictive than necessary in the agreement’s duration, geographic reach, type of work, or type of employer.

Under the bill a “nonsolicitation agreement” means a contract or

agreement between:

1. an employer and employee that prohibits solicitation by an employee, upon termination of employment, of (a) any employee of the employer to leave or (b) any customer to cease or reduce doing business with the employer or
2. an employer and any customer that prohibits solicitation by the customer of an employee of the employer to cease or reduce the extent to which it is doing business with the employer.

ENFORCEMENT

Under the bill, the attorney general, on behalf of a worker or workers, or any worker aggrieved by an alleged violation of the bill may bring a lawsuit in Superior Court for any and all relief the bill provides. In such actions, the plaintiff's burden of proof is by a preponderance of the evidence.

If a court or arbitrator determines that a noncompete agreement or an exclusivity agreement violates the bill, the violator is liable for the greater of the aggrieved worker's actual damages or a \$5,000 statutory penalty, in addition to reasonable attorney's fees, expenses, and court costs. Violators under the bill are not liable to the Labor Department for a civil penalty.

In a proceeding to enforce an agreement, the bill places the burden of proof on the party seeking to enforce a noncompete agreement or an exclusivity agreement against a worker.

The bill prohibits the court from modifying a noncompete agreement to make it partially enforceable if the agreement violates the provisions of the bill.

SEVERABILITY

Since noncompete agreements may be part of a larger employment contract that also addresses other issues, such as compensation, the bill includes provisions on severability. It specifies that a noncompete found to be unenforceable does not invalidate other parts of the

contract. This includes any provisions that require the payment of damages resulting from any injury suffered by reason of termination or separation of employment.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 10 Nay 3 (03/23/2021)