



Senate

General Assembly

File No. 402

January Session, 2021

Substitute Senate Bill No. 906

Senate, April 12, 2021

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING NONCOMPETE AGREEMENTS.

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

1 Section 1. (NEW) (*Effective July 1, 2021*) For purposes of sections 1 to
2 4, inclusive, of this act:

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) "Covenant not to compete" means a contract, provision or
10 agreement entered into, amended, extended or renewed on or after July
11 1, 2021, that restrains a worker from, or imposes penalties on a worker
12 for, engaging in any lawful profession, occupation, trade, calling or
13 business of any kind in any geographic area of the state for any period

14 of time after separation from employment, but does not mean (A) a
15 nonsolicitation agreement, provided such agreement (i) does not restrict
16 a worker's activities for more than one year, and (ii) is no more
17 restrictive than necessary in duration, geographic scope, type of work
18 and type of employer, (B) a nondisclosure or confidentiality agreement,
19 (C) a contract, provision or agreement in which an employee agrees not
20 to reapply for employment with an employer after being terminated by
21 such employer, (D) any covenant not to compete, as defined in section
22 20-14p or 20-681 of the general statutes or as described in section 31-50b
23 of the general statutes, or (E) any contract, provision or agreement made
24 (i) in anticipation of a sale of the goodwill of a business or all of the
25 seller's ownership interest in a business, or (ii) as part of a partnership
26 or ownership agreement;

27 (3) "Employee" means any individual employed or permitted to work
28 by an employer;

29 (4) "Employer" has the same meaning as provided in section 31-71a
30 of the general statutes;

31 (5) "Exclusivity agreement" means a contract, provision or agreement
32 entered into, amended, extended or renewed on or after July 1, 2021,
33 that restrains a worker from, or imposes penalties on a worker for,
34 having an additional job, supplementing the worker's income by
35 working for another employer, working as an independent contractor
36 or being self-employed;

37 (6) "Exempt employee" means an employee not included in the
38 definition of "employee" in section 31-58 of the general statutes;

39 (7) "Legitimate business interest" means an interest in the protection
40 of trade secrets or confidential information that does not qualify as a
41 trade secret, or an interest in preserving established goodwill with the
42 employer's customers;

43 (8) "Monetary compensation" means (A) wages, as defined in section
44 31-71a of the general statutes, earned over the course of the prior

45 calendar year or portion thereof, for which the employee was employed,
46 annualized based on the period of employment and calculated as of the
47 earlier of the date enforcement of the covenant not to compete is sought
48 or the date of separation from employment, and (B) payments made to
49 independent contractors based on services rendered, annualized based
50 on the period during which the independent contractor provided
51 services and calculated as of the earlier of the date enforcement of the
52 covenant not to compete is sought or the date of separation from
53 employment;

54 (9) "Nonsolicitation agreement" means (A) a contract, provision or
55 agreement between an employer and employee that prohibits
56 solicitation by an employee, upon termination of employment, of (i) any
57 employee of the employer to leave the employer, or (ii) any customer of
58 the employer to cease or reduce the extent to which it is doing business
59 with the employer, or (B) a contract, provision or agreement between an
60 employer and any customer thereof that prohibits solicitation by the
61 customer of an employee of the employer to cease or reduce the extent
62 to which it is doing business with the employer;

63 (10) "Separation from employment" means any event in which an
64 employment or independent contractor relationship ends; and

65 (11) "Worker" means an employee or an independent contractor.

66 Sec. 2. (NEW) (*Effective July 1, 2021*) (a) No employer or contractor
67 may request or require a worker to sign or agree to a covenant not to
68 compete and any such covenant not to compete shall not be enforceable
69 against such worker unless all of the following conditions are met: (1)
70 Such covenant does not restrict the worker's competitive activities for a
71 period of more than one year following the termination or separation of
72 the employee; (2) such covenant is necessary to protect a legitimate
73 business interest of the employer and such business interest could not
74 reasonably be protected by less restrictive means, including, but not
75 limited to, a nondisclosure agreement, nonsolicitation agreement, or
76 reliance on the protections provided by the provisions of chapter 625 of
77 the general statutes; (3) such covenant is no more restrictive than

78 necessary to protect such business interest in terms of the covenant's
79 duration, geographic scope, type of work and type of employer; (4) such
80 worker is an exempt employee; (5) the written text of such covenant is
81 provided to the worker not later than ten business days prior to the
82 earlier of (A) the worker's deadline to accept an offer from the employer
83 or the contractor for employment or to enter into an independent
84 contractor relationship, or (B) the date such covenant is signed; (6) such
85 covenant contains a statement of the worker's rights regarding
86 covenants not to compete, including that (A) not all covenants not to
87 compete are enforceable, (B) covenants not to compete for workers
88 earning less than the threshold provided in subsection (b) of this section
89 are illegal, (C) the worker may contact the Attorney General if the
90 worker is subject to an illegal covenant not to compete, and (D) the
91 worker has the right to consult with counsel prior to signing the
92 covenant not to compete; (7) such covenant is signed by the worker and
93 the employer or contractor separately from any other agreement
94 underlying the relationship between the worker and the employer or
95 contractor; (8) if such covenant is added to an existing employment or
96 independent contractor relationship, it is supported by sufficient
97 consideration independent from continuation of the employment or
98 contractor relationship; (9) the employment or contractual relationship
99 was not terminated by the worker for good cause attributable to the
100 employer or contractor; (10) such covenant does not require the worker
101 to submit to adjudication in a forum outside of this state or otherwise
102 purport to deprive the worker of the protections or benefits of this
103 section; and (11) such covenant does not unreasonably interfere with the
104 public's interests and is consistent with the provisions of this section,
105 other laws of this state and public policy.

106 (b) No employer or contractor may request or require a worker to
107 sign or agree to a covenant not to compete, and any such covenant not
108 to compete shall be unenforceable against such worker, if such worker
109 is an employee earning monetary compensation of less than three times
110 the minimum fair wage, as defined in section 31-58 of the general
111 statutes, or such worker is an independent contractor earning monetary
112 compensation of less than five times said minimum fair wage.

113 (c) A covenant not to compete that applies to geographic areas in
114 which a worker neither provided services nor had a material presence
115 or influence within the last two years of employment, or that applies to
116 types of work that the worker did not perform during the last two years
117 of employment, shall be presumed entirely unenforceable.

118 (d) Notwithstanding the provisions of subdivision (1) of subsection
119 (a) of this section, a covenant not to compete shall be permitted and
120 enforceable for a period of no longer than two years following
121 separation from employment if such covenant is a part of an agreement
122 under which the worker is compensated with the worker's base salary
123 and benefits, minus any outside compensation, for the entire period of
124 such covenant.

125 Sec. 3. (NEW) (*Effective July 1, 2021*) (a) No employer or contractor
126 may request or require a worker to sign or agree to an exclusivity
127 agreement, unless (1) the worker is an exempt employee earning
128 monetary compensation of more than three times the minimum fair
129 wage, as defined in section 31-58 of the general statutes, or (2) the
130 worker is an independent contractor earning monetary compensation of
131 more than five times said minimum fair wage.

132 (b) An exclusivity agreement may be permitted if a worker having an
133 additional job, supplementing his or her income by working for another
134 employer, working as an independent contractor or being self-
135 employed would: (1) Imperil the safety of the worker, the worker's
136 coworkers or the public; or (2) substantially interfere with the
137 reasonable and normal scheduling expectations of the employer or
138 contractor, provided on-call shift scheduling shall not be considered a
139 reasonable scheduling expectation for the purposes of this subdivision.

140 (c) The provisions of this section shall not be construed to alter any
141 obligations of an employee to an employer under existing law,
142 including, but not limited to, the common law duty of loyalty and laws
143 preventing conflicts of interest and any corresponding policies
144 addressing such obligations.

145 Sec. 4. (NEW) (*Effective July 1, 2021*) (a) The party seeking to enforce
146 a covenant not to compete or an exclusivity agreement against a worker
147 shall have the burden of proof in any enforcement proceeding. The
148 party required to continue to compensate an employee or independent
149 contractor in an agreement under subsection (d) of section 2 of this act
150 shall have the burden of proof in any proceeding to enforce such
151 requirement to continue to compensate such employee or independent
152 contractor.

153 (b) No court shall judicially modify a covenant not to compete that
154 violates the provisions of sections 1 to 3, inclusive, of this act, in order
155 to partially enforce such covenant.

156 (c) Any severable provisions of any contract or agreement that
157 includes a covenant not to compete or an exclusivity agreement that is
158 held unenforceable under the provisions of sections 1 to 3, inclusive, of
159 this act, shall remain in full force and effect, including, but not limited
160 to, any provisions that require the payment of damages resulting from
161 any injury suffered by reason of termination or separation of
162 employment.

163 (d) The Attorney General, on behalf of a worker or workers, or any
164 worker aggrieved by a violation of any provision of sections 1 to 3,
165 inclusive, of this act, may bring a civil action in the Superior Court for
166 any and all relief provided in this section.

167 (e) If a court or an arbitrator determines that a covenant not to
168 compete or an exclusivity agreement violates any provision of sections
169 1 to 3, inclusive, of this act, the violator shall be liable for the greater of
170 the aggrieved worker's actual damages or a penalty of five thousand
171 dollars, in addition to reasonable attorney's fees, expenses and court
172 costs.

173 (f) Notwithstanding section 31-69a of the general statutes, no
174 employer, officer, agent or other person who violates any provision of
175 this section shall be liable to the Labor Department for a civil penalty.

176 Sec. 5. Section 31-50a of the general statutes is repealed and the
177 following is substituted in lieu thereof (*Effective July 1, 2021*):

178 (a) No employer may require any person employed in the
179 classification 339032 of the standard occupational classification system
180 of the Bureau of Labor Statistics of the United States Department of
181 Labor to enter into an agreement prohibiting such person from engaging
182 in the same or a similar job, at the same location at which the employer
183 employs such person, for another employer or as a self-employed
184 person, unless the employer proves that such person has obtained trade
185 secrets, as defined in subsection (d) of section 35-51, of the employer.

186 (b) (1) Any person who is aggrieved by a violation of this section may
187 bring a civil action in the Superior Court to recover damages and for
188 such injunctive and equitable relief as the court deems appropriate.

189 (2) The Labor Commissioner may request the Attorney General to
190 bring an action in the superior court for the judicial district of Hartford
191 for restitution on behalf of any person injured by any violation of this
192 section and for such injunctive or equitable relief as the court deems
193 appropriate.

194 (c) The provisions of this section shall apply to agreements entered
195 into, renewed or extended on or after October 1, 2007, and before July 1,
196 2021.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2021</i>	New section
Sec. 2	<i>July 1, 2021</i>	New section
Sec. 3	<i>July 1, 2021</i>	New section
Sec. 4	<i>July 1, 2021</i>	New section
Sec. 5	<i>July 1, 2021</i>	31-50a

Statement of Legislative Commissioners:

In Section 1(3), "20-14p, 20-681 or 31-50b" was changed to 20-14p or 20-681 of the general statutes or as described in section 31-50b" for accuracy and consistency with standard drafting conventions; in Section 1(5),

"their" was changed to "the worker's" for clarity and consistency with standard drafting conventions; in Section 1(8), "calendar" was added before "year" for clarity; in Section 1(10) "at" was changed to "in" for clarity and accuracy; in Section 2(a)(2), "nondisclosure agreement, nonsolicitation agreement" was changed to "nondisclosure or nonsolicitation agreement" for conciseness; Section 2(a)(5) was rewritten for clarity; in Section 2(a)(6)(B), "in subdivision (4) of this subsection" was changed to "provided in subsection (b) of this section" for accuracy; in Section 2(a)(7), "between the worker and the employer or contractor" was added after "relationship" for clarity; in Section 2(a)(10), "Connecticut" was changed to "this state" for consistency with standard drafting conventions; in Section 2(a)(11), "the provisions of" was inserted before "this" for clarity; in Section 2(b), "Even if otherwise valid under the provisions of this section" was deleted for consistency with standard drafting conventions and "not be enforceable" was changed to "be unenforceable" for clarity; in Section 2(c), "Even if otherwise valid under this section" was deleted for consistency with standard drafting conventions; Section 3(a) was divided into Subdivs. for clarity; in Section 3(b), "This section shall not apply when" was changed to "An exclusivity agreement may be permitted if" for clarity; in Section 3(c), "The provisions of" was added before "This section" for accuracy and consistency with standard drafting conventions; in Section 4(a), "subsection (c)" was changed to "subsection (d)" for accuracy; in Section 4(e), "statutory" was deleted for consistency with standard drafting conventions.

LAB *Joint Favorable Subst.*

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 22 \$	FY 23 \$
Resources of the General Fund	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which sets limits on the use of covenant not to compete provisions in employment contracts, results in a potential minimal revenue gain to the extent there are violations and a court imposes penalties.¹

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any cost impact. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to require additional resources.

The bill has no cost impact to the state or municipalities as employers. To the extent that either the state or municipalities enter into non-compete contracts with their employees, the bill is not anticipated to change the cost of any such contract.

The Out Years

¹ Under the bill a 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.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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 sunseting 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)