

# Labor and Public Employees Committee

## JOINT FAVORABLE REPORT

**Bill No.:** HB-6379

**Title:** AN ACT CONCERNING WORKERS' RIGHTS.

**Vote Date:** 3/25/2021

**Vote Action:** Joint Favorable Substitute

**PH Date:** 2/9/2021

**File No.:**

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### **SPONSORS OF BILL:**

Labor and Public Employees

### **REASONS FOR BILL:**

Workers in low-wage jobs are being forced to si

### **RESPONSE FROM ADMINISTRATION/AGENCY:**

None submitted.

### **NATURE AND SOURCES OF SUPPORT:**

#### **LEWIS CHIMES, ATTORNEY**

There is a statute (20-14p) that places restrictions on non-competition agreements for physicians. There is no reason that carpenters, veterinarians, automobile salesmen and restaurant workers should be treated any differently than doctors. Due to COVID-19, many people have lost their jobs who had signed non-competition agreements as a condition of their employment. These people have lost their livelihood due to no fault of their own and they are banned from finding comparable work in their chosen field. This is unconscionable and should not be allowed to continue. Healthy competition promotes fair pricing for goods and services and motivates companies to provide better services. In the labor market, it encourages employers to pay fair wages and provide reasonable benefits to maintain their workforce. Employees generally have no right to refuse to sign a covenant if they want the job. These covenants are not the result of negotiate terms between parties. Time limitations on the ability to return to the job market over a year make it exceedingly difficult for trained people to remain relevant in their professions. The burden of non-competition agreements is felt most heavily by low income workers who don't have the resources to move away. This bill provides a reasonable balance between the need of businesses to protect their legitimate

interest and the compelling economic public policy of allowing workers, particularly low-income workers, free and unfettered access to the labor market.

### **CT TRIAL LAWYERS ASSOCIATION**

They see no reason that other occupations should be treated any differently than doctors as far as placing reasonable limitations on the right to force employees to sign a non-competition agreement as a condition to employment. This proposal codifies the existing law on the reasonableness of non-competition agreements with 5 important limitations: 1. One year limitation on covenant not to compete. 2. Covenants not to compete shall not be imposed on low income workers, 3. Covenants not to compete shall not be enforceable if the employer discharges the employee or the employees leaves for good cause attributable to the employer. 4. Employee are to be given a ten-day grace period to sign a covenant not to compete and are to be advised that they have the right to consult with counsel prior to signing. 5. This proposal does not affect employer's interest in protecting their existing customers, confidential information and trade secrets. They urge passage of this bill.

### **JOSEPH D. GARRISON, ATTORNEY**

Employment in CT and nearly every other state and territory – is "at-will" Unless they have the benefit of a collective bargaining agreement or another form of employment contract, CT's worker can be terminated from their jobs for any reason or no reason at all, so long as the reason is not an unlawful one. The growing prevalence of covenants undermines the trade-offs because employees are unable to leave their employment for a better position in their same industry because this would violate their non-compete agreements. They have no choice but to stay. This bill would prohibit employers from enforcing non-competes against employees who have been laid off. An employee who is facing a layoff through no fault of their own should be able to accept any job offers. They encourage passage, but also suggest the following: 1. Prohibit "blue Penciling". which permits courts to revise or rewrite contractual clauses that are unenforceable in order to narrow them to the point they are enforceable. 2. Prohibit "choice of law" and "forum selection" clauses. CT workers should have the benefit of CT's non-compete law in courts or arbitrations in CT. 3, Prohibit one-way fee shifts which are unfair, The fair approach is for both parties to recover their fees if they 'prevail' or for neither to do so. 4, Make developments in non-compete law retrospective. This bill is a step In the right direction.

### **SUE GARTEN, GREATER HARTFORD LEGAL AID**

Traditionally, non-compete covenants were intended to protect an employer's competitive advantage by preventing more highly trained and compensated employees from taking a job at a competing business and/or disclosing specialized knowledge and skills acquired at the former employer. Now, employers have required low wage workers – including fast food workers, commercial cleaners and home health aides – to sign these covenants. They do not have any skills and are not privy to trade secrets. This is harmful to the economic well-being of low wage workers and their families. Many of these workers do not have any other marketable skills and this prevents them from seeking or accepting better jobs with higher wages. This proposal has reasonable restrictions to ensure both employers and employees are adequately protected.

### **CT WOMEN'S EDUCATION AND LEGAL FUND**

Noncompete agreements often reduce a workers' ability to leave, or even threaten to leave a job, since they are unable to advertise their skills to their employer's competition without threat of litigation. If an employee seeks a new job, they may be forced to work in a different field where their skills are less applicable and the pay lower. CT should prioritize retaining skilled workers and bar the use of noncompete agreements. Too many workers are stuck in jobs they don't want with wages that are too low. The pandemic has limited the opportunities workers have. Women of color are already over-represented in low wage jobs. Workers deserve the right to support their family and contribute to the economy by seeking employment in the industry where they are skilled.

#### **SAL LUCIANO, PRESIDENT, CT AFL-CIO**

Non-competes were originally designed to protect employers from competition from businesses who hired their former employees and utilized trade secrets, skills and experience learned on the job. Now, low-wage employers, even in the service, restaurant and hospitality industries, commonly require non-competes for entry-level positions. This is an abuse of power and should be stopped. Amazon requires warehouse employees and fast food restaurants are also players in this arena. These agreements are a way employers are rigging the system by eliminating a workers right to move to a better paying position. Wages are artificially suppressed which reduces overall economic growth. Protect vulnerable workers by prohibiting the use of non-compete agreements where they are not warranted.

#### **STACY ZIMMERMAN, PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, COUNCIL SEIU**

They support this bill and all the bills on the public hearing agenda. These bills have the ability to stabilize workplaces and they address both longstanding and COVID-19 related employment issues.

### **NATURE AND SOURCES OF OPPOSITION:**

#### **CT HOSPITAL ASSOCIATION**

As drafted, this bill does not provide sufficient clarity as to the restrictive covenants that are proposed to be prohibited, making it impossible to assess the impact it would have. The reference to "certain employees" does not indicate which employees or categories of employees will be covered by the prohibition. The reference to "unfair covenants not to compete" does not indicate how fairness is to be assessed in the context of the employer-employee relationship or whether what is proposed is a change to current law. The statute currently used (Public Act 16-95) defines a covenant not to compete as "any provision of an employment or other contract or agreement that creates or establishes a professional relationship with a physician and restricts the right of a physician to practice medicine in any geographic area of the state for any period of time after termination or cessation of such partnership, employment or other professional relationship." A few years ago, the General Assembly engaged in a long, arduous, and thorough examination of the use of covenants not to compete in physician contracts. The outcome was a statute that attempts to achieve a balance between the legitimate interests of both the employer and the physician. They urge a decision to leave the current statute intact.

#### **ERIC GJEDE, VICE PRESIDENT OF GOVERNMENT AFFAIRS, CBIA**

These agreements have been heavily restricted by the courts to balance the interests of employers and employees while ensuring appropriateness of scope, geography and duration. While there are circumstances where these agreements are inappropriate, this proposal removes the protections noncompete agreements provide in circumstances where they are needed most. This bill prohibits the use of these agreements for any employee that doesn't earn at least twice the minimum wage. This is a problem because the new minimum wage is not adjusted on an annual basis. This would void agreements as the wage rate rises over time. Also, if an employer terminates a worker for good cause, the employee would not be prohibited from stealing a former employer's clients or revealing trade secrets. Non-compete agreements provide critical protections for many industries.

**Reported by:** Marie Knudsen, Assistant Clerk

**Date:** March 21, 2021