



House of Representatives

General Assembly

File No. 11

January Session, 2023

Substitute House Bill No. 6594

House of Representatives, March 6, 2023

The Committee on Labor and Public Employees reported through REP. SANCHEZ, E. of the 24th Dist., Chairperson of the Committee on the part of the House, 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, 2023*) As used in this section and
2 sections 2 to 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, excluding any overtime or bonus compensation, and (B)
6 health insurance benefits and other fringe benefits received by an
7 employee over the course of the prior calendar year;

8 (2) "Covenant not to compete" means a contract, provision or other
9 agreement entered into, amended, extended or renewed on or after July
10 1, 2023, that restrains, or imposes penalties on, a worker from engaging
11 in any lawful profession, occupation, trade, calling or business of any
12 kind in any geographic area of the state for any period of time after
13 separation from employment, but does not mean (A) a nonsolicitation

14 agreement, provided such agreement (i) does not restrict a worker's
15 activities for more than one year, and (ii) is no more restrictive than
16 necessary in duration, geographic scope, type of work and type of
17 employer, (B) a nondisclosure or confidentiality agreement, (C) a
18 contract, provision or other agreement in which an employee agrees to
19 not reapply for employment with an employer after being terminated
20 by such employer, (D) any covenant not to compete, pursuant to
21 sections 20-14p, 20-681 and 30-50b of the general statutes, or (E) any
22 contract, provision or other agreement made (i) in anticipation of a sale
23 of the goodwill of a business or all of the seller's ownership interest in a
24 business, or (ii) as part of a partnership or ownership agreement;

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

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

29 (5) "Exclusivity agreement" means a contract, provision or other
30 agreement entered into, amended, extended or renewed on or after July
31 1, 2023, that restrains a worker from, or imposes a penalty on, a worker
32 for being simultaneously employed by another employer, working as
33 an independent contractor or being self-employed;

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

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

40 (8) "Minimum fair wage" has the same meaning as provided in
41 section 31-58 of the general statutes;

42 (9) "Monetary compensation" means (A) wages, as defined in section
43 31-71a of the general statutes, earned over the course of the prior
44 calendar year or portion thereof, for which the employee was employed,

45 annualized based on the period of employment and calculated as of (i)
46 the date that enforcement of the covenant not to compete is sought, or
47 (ii) the date of separation from employment, whichever is earlier, and
48 (B) payments made to independent contractors based on services
49 rendered, annualized based on the period during which the
50 independent contractor provided services and calculated as of (i) the
51 date that enforcement of the covenant not to compete is sought, or (ii)
52 the date of separation from employment, whichever is earlier;

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

63 (11) "Separation from employment" means the date in which an
64 employment or independent contractor relationship ends; and

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

66 Sec. 2. (NEW) (*Effective July 1, 2023*) (a) No covenant not to compete
67 shall be enforceable against a worker unless all of the following
68 conditions are met:

69 (1) The covenant not to compete restricts such worker's competitive
70 activities for a period of not more than one year following the separation
71 of employment;

72 (2) The covenant not to compete is necessary to protect a legitimate
73 business interest of the employer and such legitimate business interest
74 could not reasonably be protected by less restrictive means, including,
75 but not limited to, a nondisclosure agreement, nonsolicitation

76 agreement or reliance on the protections provided by the provisions of
77 chapter 625 of the general statutes;

78 (3) The covenant not to compete is no more restrictive than necessary
79 to protect a legitimate business interest in terms of the duration,
80 geographic scope, type of work and type of employer of the covenant
81 not to compete;

82 (4) The worker is an exempt employee;

83 (5) A written copy of the covenant not to compete is provided to the
84 worker not later than ten business days prior to (A) the worker's
85 deadline to accept an offer of employment or to enter into an
86 independent contractor relationship, or (B) the date the covenant not to
87 compete is signed, whichever is earlier;

88 (6) The covenant not to compete contains a statement of the worker's
89 rights under the covenant not to compete, provided such statement
90 includes the following: (A) Not all covenants not to compete are
91 enforceable, (B) a covenant not to compete for a worker whose monetary
92 compensation is less than the amount described in subsection (b) of this
93 section is illegal, (C) a worker may contact the Attorney General if such
94 worker believes they are subject to an illegal covenant not to compete,
95 and (D) a worker has the right to consult with counsel prior to signing a
96 covenant not to compete;

97 (7) The covenant not to compete is signed by the worker and the
98 employer or contractor separately from any other agreement
99 establishing the relationship between the worker and the employer or
100 contractor;

101 (8) If the covenant not to compete is added to an existing employment
102 or independent contractor relationship, the covenant not to compete is
103 supported by sufficient consideration and is not solely the continuation
104 of such employment or contractor relationship;

105 (9) The employment or contract relationship was not terminated by
106 the worker for good cause attributable to the employer or contractor;

107 (10) The covenant not to compete does not require a worker to submit
108 to adjudication in a forum outside of this state or otherwise deprive such
109 worker of the protections or benefits of this section; and

110 (11) The covenant not to compete does not unreasonably interfere
111 with the public interest and is consistent with the provisions of this
112 section, other laws of this state and public policy.

113 (b) No covenant not to compete shall be enforceable against a worker
114 if such worker is (1) an employee whose monetary compensation is less
115 than three times the minimum fair wage, or (2) an independent
116 contractor whose monetary compensation is less than five times such
117 minimum fair wage.

118 (c) A covenant not to compete shall be presumed unenforceable if
119 such covenant applies to (1) geographic areas in which a worker neither
120 provided services nor had a material presence or influence in during the
121 last two years of employment, or (2) types of work that the worker did
122 not perform during the last two years of employment.

123 (d) Notwithstanding the provisions of subdivision (1) of subsection
124 (a) of this section, a covenant not to compete shall be enforceable for a
125 period of not longer than two years following separation from
126 employment if such covenant not to compete is a part of an agreement
127 under which the worker is compensated with the worker's base salary
128 and benefits, minus any outside compensation, for the entire duration
129 of such covenant not to compete.

130 Sec. 3. (NEW) (*Effective July 1, 2023*) (a) Except as otherwise provided
131 in subsection (b) of this section, no employer or contractor may request
132 or require a worker to sign or agree to an exclusivity agreement, unless
133 such worker is (1) an exempt employee whose monetary compensation
134 is more than three times the minimum fair wage, or (2) an independent
135 contractor whose monetary compensation is more than five times the
136 minimum fair wage.

137 (b) An employer or contractor may request or require a worker to sign

138 an exclusivity agreement if such worker's additional employment, work
139 as an independent contractor or being self-employed would (1) imperil
140 the safety of such worker, such worker's coworkers or the public, or (2)
141 substantially interfere with the reasonable and normal scheduling
142 expectations for such worker, except on-call shift scheduling shall not
143 be considered a reasonable scheduling expectation for the purposes of
144 this subsection.

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

150 Sec. 4. (NEW) (*Effective July 1, 2023*) (a) (1) The party seeking to
151 enforce a covenant not to compete or an exclusivity agreement against
152 a worker shall have the burden of proof in any enforcement proceeding
153 for such covenant not to compete or exclusivity agreement.

154 (2) The party required to compensate a worker in an agreement
155 described in subsection (d) of section 2 of this act shall have the burden
156 of proof in any proceeding to cease compensating a worker.

157 (b) No court may modify a covenant not to compete that violates the
158 provisions of sections 1 to 3, inclusive, of this act for purposes of
159 enforcing such covenant not to compete.

160 (c) If a covenant not to compete or an exclusivity agreement is held
161 unenforceable under sections 1 to 3, inclusive, of this act, any severable
162 provision of a contract or other agreement unrelated to such covenant
163 not to compete shall remain in full force and effect, including, but not
164 limited to, any provisions that require the payment of damages
165 resulting from any injury suffered by separation of employment.

166 (d) The Attorney General may bring a civil action in Superior Court
167 on behalf of any worker aggrieved by a violation of any provision of
168 sections 1 to 3, inclusive, of this act for any and all relief provided in this

169 section.

170 (e) If a court or an arbitrator determines that a covenant not to
171 compete or an exclusivity agreement is in violation of sections 1 to 3,
172 inclusive, of this act, the violator shall be liable for (1) the aggrieved
173 worker's actual damages, or (2) a penalty of five thousand dollars,
174 whichever is greater, in addition to reasonable attorney's fees, expenses
175 and court costs.

176 (f) No employer, officer, agent or other person who violates any
177 provision of this section shall be liable for an additional penalty under
178 section 31-69 of the general statutes.

179 Sec. 5. Section 31-50a of the general statutes is repealed and the
180 following is substituted in lieu thereof (*Effective July 1, 2023*):

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

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

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

197 (c) The provisions of this section shall apply to agreements entered
198 into, renewed or extended on or after October 1, 2007, and before July 1,
199 2023.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2023</i>	New section
Sec. 2	<i>July 1, 2023</i>	New section
Sec. 3	<i>July 1, 2023</i>	New section
Sec. 4	<i>July 1, 2023</i>	New section
Sec. 5	<i>July 1, 2023</i>	31-50a

Statement of Legislative Commissioners:

In Section 4(e), "is in violation of" was added for clarity.

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: None

Municipal Impact: None

Explanation

The bill, which sets limits on the use of "covenant not to compete" provisions in employment contracts, does not result in any fiscal impact to the state or municipalities.¹

The bill allows the attorney general to bring a civil action in Superior Court for the relief the bill provides, which does not result in any cost impact. The court system disposed of over 266,000 cases in FY 22 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

State Impact: None

Municipal Impact: None

¹ Under the bill, violators are not liable to the Labor Department for any civil penalties imposed under the state's wage laws.

OLR Bill Analysis**sHB 6594*****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 a worker (employee or independent contractor) from, or imposes penalties for, engaging in any kind of profession, occupation, trade, or business in a geographic area for a set 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 after being terminated, and (4) any contract or agreement made (a) in anticipation of a sale of a business’s goodwill 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 it meets specific requirements, including that the covered employee earn at least three times the minimum wage and be exempt from the state’s minimum wage laws.

The bill also sets limits on exclusivity agreements, which it defines as a contract, provision, or 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.

It applies to noncompete and exclusivity agreements entered into, amended, extended, or renewed on or after July 1, 2023. The bill applies

to private employers as well as state and municipal employers.

The bill's provisions do not apply to noncompete agreements for two professions under existing law: (1) physicians and (2) homemakers, companions, or home health aides. It also sunsets, on June 30, 2023, a law that prohibits certain noncompete agreements for security guards, making security guards subject to the bill's general provisions on noncompete agreements. (The bill is silent on a fourth type of existing noncompete law that prohibits noncompete contracts for broadcast employees.)

EFFECTIVE DATE: July 1, 2023

CONDITIONS FOR NONCOMPETE AGREEMENTS (§§ 1 & 2)

The bill makes a noncompete agreement between an employer and worker unenforceable unless specific conditions are met.

Covered Workers

To be enforceable, among other things, a noncompete agreement must only be applied to workers who are "exempt employees" (i.e., those exempt from the state's minimum wage laws, such as people employed in a qualifying executive, administrative, or professional capacity). The workers must be either:

1. employees earning "monetary compensation" (as described below) of at least three times the state minimum wage; or
2. independent contractors earning monetary compensation of at least five times the state minimum wage.

Restrictions

Under the bill, to be enforceable noncompete agreements must:

1. be limited to a period of up to one year following the worker's termination or separation, except as described below;
2. be necessary to protect the employer's "legitimate business interest" that could not reasonably be protected through less

- restrictive means, including a nondisclosure agreement, non-solicitation agreement, or the state Uniform Trade Secrets Act's business protections;
3. be no more restrictive than necessary to protect a legitimate business interest in terms of the agreement's duration, geographic scope, type of work, and type of employer;
 4. 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
 5. not unreasonably interfere with the public interest and be consistent with the bill's requirements, other state laws, and public policy.

Under the bill, a "legitimate business interest" is an interest in (1) protecting trade secrets or confidential information that does not qualify as a trade secret or (2) preserving established goodwill with the employer's customers.

Also, a noncompete agreement is unenforceable if the worker terminates the employment or contractual relationship for good cause attributable to the employer or contractor.

Furthermore, under the bill a noncompete agreement must:

1. be provided to the worker in writing at least 10 business days before the earlier of the (a) deadline for accepting the employment offer or offer to enter into an independent contractor relationship or (b) date the agreement is signed;
2. contain a statement of the worker's noncompete agreement rights, as described 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 and not be the only basis for continuing the employment or contractor relationship if the agreement is added to an existing employment or independent contractor relationship.

In addition, under the bill, 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 this same period.

Required Statement of Workers' Rights

Under the bill, the noncompete agreement is not enforceable unless it contains a statement of the worker's rights under the agreement, including that:

1. not all noncompete agreements are enforceable,
2. noncompete agreement for workers who earn less than the applicable thresholds established in the bill are illegal,
3. workers may contact the attorney general if they believe they are subject to an illegal noncompete agreement, and
4. they have a right to consult with counsel before signing it.

Definition of Monetary Compensation

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.

Exception to the Duration Limit (§ 2(d))

The bill allows a noncompete agreement to be enforceable for up to two years if it is part of an agreement under which the worker is paid his or her “base salary and benefits,” minus any outside compensation, for the entire period of the noncompete agreement. It defines “base salary and benefits” as (1) wages earned over the course of the prior calendar year, excluding any overtime or bonus pay, and (2) health insurance benefits and other fringe benefits the employee received over the course of the prior calendar year.

Exclusion for Nonsolicitation Agreements

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

Under the bill, a “nonsolicitation agreement” means a contract or agreement between:

1. an employer and employee that prohibits an employee, upon separation of employment, from soliciting (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 the customer from soliciting an employee of the employer to stop or reduce doing business with the employer.

EXCLUSIVITY AGREEMENTS (§ 3)

The bill permits exclusivity agreements (i.e., contracts, provisions, or agreements that restrain a worker from, or penalize him or her for, simultaneously working for another employer, working as an independent contractor, or being self-employed) only if the worker is an (1) exempt employee with monetary compensation, as defined above, more than three times the state’s minimum wage or (2) independent contractor with monetary compensation more than five times the state’s

minimum wage.

However, the bill allows exclusivity agreements if the worker's additional employment would (1) endanger 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 requires that its exclusivity agreement provisions not be construed to alter an employee's obligations to an employer under existing law. This includes the common law duty of loyalty, laws preventing conflicts of interest, and any corresponding policies on these obligations.

ENFORCEMENT (§ 4)

Attorney General's Authority to Bring Civil Actions

The bill allows the attorney general, on behalf of a worker aggrieved by a violation of the bill's noncompete and exclusivity agreement provisions, to bring a civil action in Superior Court for the relief the bill provides.

Penalty

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 \$5,000 or the aggrieved worker's actual damages, in addition to reasonable attorney's fees, expenses, and court costs. Under the bill, violators are not liable to the Labor Department for an additional civil penalty imposed under the state's wage laws.

Burden of Proof

In any enforcement proceeding, the bill places the burden of proof on the party seeking to enforce a noncompete or exclusivity agreement against a worker. In any proceeding to stop compensating a worker under an agreement in which a worker is paid for the entire period of the noncompete agreement, the bill puts the burden of proof on the party required to compensate the worker.

Unenforceable Agreements

The bill prohibits the court from modifying a noncompete agreement that violates the bill’s provisions to make it enforceable. It also specifies that if a noncompete or exclusivity agreement is found to be unenforceable, any severable provisions of a contract of other agreement that are unrelated to the noncompete agreement remain in full force and effect. This includes any provisions that require the payment of damages resulting from any injury suffered by separation of employment.

EXISTING NONCOMPETE LAWS (§§ 1 & 5)

Current law restricts the use of noncompete agreements in four types of professions: (1) physicians; (2) homemakers, companions, and home health aides; (3) security guards; and (4) broadcast employees.

The bill’s provisions do not apply to noncompete agreements covered under the existing laws for physicians or homemakers, companions, and home health aides, leaving these existing laws in effect. It creates an end date, July 1, 2023, for the current limitations on noncompete agreements for security guards. In doing so, it sunsets the current limitations on these agreements and instead subjects them to the bill’s general provisions.

The bill does not contemplate how its provisions on noncompete agreements interact with those under existing law for broadcast employees.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 4 (02/16/2023)