OLR Bill Analysis

HB 5269

AN ACT CONCERNING NONCOMPETE AGREEMENTS.

SUMMARY

This bill sets limits on the use of noncompete agreements (i.e., "covenant not to compete" provisions) for employees and independent contractors. Under the bill, a noncompete agreement is enforceable only if it meets specific requirements, including that (1) the covered employee earn at least three times the minimum wage or independent contractor earn at least five times the minimum wage and (2) any covered employee be exempt from the state's minimum wage laws.

The bill also sets limits on exclusivity agreements that employers and contractors can ask or require workers to sign. It applies to noncompete and exclusivity agreements entered into, amended, extended, or renewed on or after July 1, 2024. The bill applies to private employers as well as state and municipal employers.

The bill's noncompete agreement provisions do not apply to noncompete agreements for three professions under existing law: (1) physicians, (2) homemaker and companion services employees, and (3) broadcast employees. It also sunsets, on June 30, 2024, 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 permits an aggrieved worker or, in the name of the state, the attorney general to bring a civil action in Superior Court seeking remedies for violations of the bill. The worker may seek to recover damages, civil penalties, and equitable and injunctive relief as the court decides. The court may award a civil penalty of up to $5,000 if it finds that a noncompete or exclusivity agreement violates the bill's

provisions.

The attorney general may seek injunctive or declaratory relief, damages, and any other relief that may be available under law when there is a violation of the bill. The bill also specifies other attorney general actions, such as accepting an assurance the employer will discontinue the practice, in lieu of seeking civil action.

EFFECTIVE DATE: July 1, 2024

§ 1 — NONCOMPETE AGREEMENTS DEFINED

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 of the state for a set period after separation from employment.

The bill excludes from this definition (1) nonsolicitation agreements that meet certain standards (as described below), (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.

§§ 1 & 2 — CONDITIONS FOR NONCOMPETE AGREEMENTS

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

Covered Workers (§ 1)

To be enforceable, a noncompete agreement must, among other things, 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 an hourly wage of at least three times the state

minimum wage; or

2. independent contractors earning an hourly wage of at least five times the state minimum wage.

For hourly employees, hourly wages are the employee's wages calculated on an hourly basis. For all others, they are the employee's "annualized monetary compensation" divided by 2,080 to convert it to an hourly rate (40 hours a week multiplied by 52 weeks equals 2,080).

Under the bill, "annualized monetary compensation" for employees means wages earned over the course of the prior calendar year, or portion of that year, for which the employee was employed. For independent contractors, it means payments for services rendered. In either case, these amounts are annualized and calculated as of the earlier of the (1) date enforcement of the noncompete agreement is sought or (2) date of separation from employment.

Restrictions (§ 2)

Under the bill, to be enforceable noncompete agreements must:

1. be limited to a period of up to one year following the worker's separation from employment (i.e., the date on which the employment relationship ends), 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, nonsolicitation 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 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, to be enforceable 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 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 (§ 2(a))

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 agreements for workers who earn less than the 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.

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

The bill allows a noncompete agreement to be enforceable for up to two years after the separation from employment 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 in the prior calendar year.

EXCLUSION FOR NONSOLICITATION AGREEMENTS (§ 1)

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 any (a) employee of the employer to leave or (b) 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.

§ 3 — EXCLUSIVITY AGREEMENTS

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 exempt employee or independent contractor who meets the same hourly wage thresholds the bill sets for noncompete agreements.

However, the bill also 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's 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 a worker'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.

§§ 5 & 6 — ENFORCEMENT

Aggrieved Worker May Bring Civil Actions (§ 5)

The bill allows any worker aggrieved by a violation of the bill to bring a civil action in the Superior Court for the district where the violation is alleged to have occurred. The action can seek to recover damages, civil penalties, and equitable and injunctive relief as the court decides. The court may also award reasonable costs and attorney's fees to the person who prevails.

If the court finds that a noncompete or exclusivity agreement violates the bill's provisions, it may assess a civil penalty of up to $5,000.

Attorney General Actions (§ 6)

The bill authorizes the attorney general to investigate, intervene, or bring a civil action in the name of the state, seeking injunctive or declaratory relief, damages, and any other relief that may be available under law, when there is a violation of the bill. Specifically, the attorney general may do this when an employer or contractor is engaged in a practice or pattern of conduct that subjects workers to a covenant not to compete or exclusivity agreement that violates the bill's requirements.

The attorney general may issue subpoenas and interrogatories, and otherwise gather information, in the same manner and to the same extent as provided under the Connecticut Antitrust Act. The bill bars any information obtained by the attorney general in these actions from being used in a criminal proceeding.

The bill gives the attorney general the option to, in lieu of seeking civil action, accept from the employer an assurance that it will stop any alleged unlawful practice. Any evidence of a violation of this assurance is prima facie proof of a violation of the applicable law in any later action the attorney general takes.

The bill also specifies that nothing in its enforcement provisions permits the attorney general to bring an action that would otherwise be barred under the applicable statute of limitations.

It also requires the attorney general to post on his agency's website information on how to file a complaint regarding noncompete or exclusivity agreements.

Claims Regarding State Agencies (§ 6(g))

The bill specifies that it does not authorize the attorney general to assert any claim against a state agency, or state officer or employee in the officer's or employee's official capacity, regarding the agency's, officer's, or employee's actions or omissions. If the attorney general determines that a state officer or state employee is not entitled to indemnification provided under state law, the attorney general can take any action authorized under the bill.

Court Awards and Distribution (§ 6(c))

Under the bill, if the attorney general prevails in a civil action, the court must order the distribution of any damages awarded to the injured worker. The bill also permits the court to award civil penalties of up to $5,000 against each defendant, which must be deposited into the General Fund.

The bill specifies that employers, contractors, officers, and agents found to have violated the bill's noncompete and exclusivity agreement provisions cannot be liable for an additional penalty under the state law addressing retaliation regarding wage complaints.

§ 4 — 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.

§ 4 — UNENFORCEABLE AGREEMENTS

The bill prohibits the court from modifying a noncompete or exclusivity 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 or 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 from employment.

§§ 1 & 7 — EXISTING NONCOMPETE LAWS

Current law restricts the use of noncompete agreements in four types of professions: (1) physicians, (2) homemaker and companion services employees, (3) broadcast employees, and (4) security guards.

The bill's provisions do not apply to noncompete agreements covered under the existing laws for physicians; homemakers, companions, and

home health aides; and broadcast employees, leaving these existing laws in effect. It creates an end date, July 1, 2024, 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.

BACKGROUND

Related Bill

HB 5366, favorably reported by the Human Services Committee, allows noncompete agreements for up to six months for homemaker and companion services employees who have received paid training from their homemaker-companion agency.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable
Yea 8 Nay 4 (03/07/2024)