House of Representatives

General Assembly

File No. 104

February Session, 2024

Substitute House Bill No. 5269

House of Representatives, March 25, 2024

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:

Section 1. (NEW) (*Effective July 1, 2024*) As used in this section and sections 2 to 6, inclusive, of this act:

(1) "Annualized monetary compensation" means (A) wages earned over the course of the prior calendar year, or portion thereof, for which the employee was employed annualized based on the period of employment and calculated as of (i) the date that enforcement of the covenant not to compete is sought, or (ii) the date of separation from employment, whichever is earlier, and (B) payments made to independent contractors based on services rendered annualized based on the period during which the independent contractor provided services and calculated as of (i) the date that enforcement of the covenant not to compete is sought, or (ii) the date of separation from employment, whichever is earlier;

(2) "Base salary and benefits" means (A) wages earned over the course of the prior calendar year, excluding any overtime or bonus compensation, and (B) health insurance benefits and other fringe benefits received by an employee over the course of the prior calendar year;

(3) "Covenant not to compete" means a contract, provision or other agreement entered into, amended, extended or renewed on or after July 1, 2024, that restrains a worker from, or imposes penalties on a worker for, engaging in any lawful profession, occupation, trade, calling or business of any kind in any geographic area of the state, for any period of time after separation from employment. "Covenant not to compete" does not mean (A) a nonsolicitation agreement, provided such agreement (i) does not restrict a worker's activities for more than one year, and (ii) is no more restrictive than necessary in duration, geographic scope, type of work and type of employer, (B) a nondisclosure or confidentiality agreement, (C) a contract, contract provision or other agreement in which an employee agrees to not reapply for employment with an employer after being terminated by such employer, (D) any covenant not to compete, described in sections 20-14p, 20-670 and 31-50b of the general statutes, or (E) any contract, contract provision or other agreement made either (i) in anticipation of a sale of the goodwill of a business or all of the seller's ownership interest in a business, or (ii) as part of a partnership or ownership agreement;

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

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

(6) "Exclusivity agreement" means a contract, contract provision or other agreement entered into, amended, extended or renewed on or after July 1, 2024, that restrains a worker from, or imposes a penalty on a worker for, being simultaneously employed by the employer and another employer, working as an independent contractor or being self-

employed;

(7) "Exempt employee" means any employee not included in the definition of "employee" in section 31-58 of the general statutes;

(8) "Hourly wage" means, in the case of an hourly employee, such employee's wages calculated on an hourly basis or, for any other employee, annualized monetary compensation converted to an hourly rate by dividing such monetary compensation by two thousand eighty;

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

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

(11) "Nonsolicitation agreement" means (A) a contract, contract provision or other agreement between an employer and an employee that prohibits such employee, upon separation of employment, from soliciting (i) any employee of such employer to leave the employer, or (ii) any customer of such employer to cease or reduce the extent to which such customer is doing business with the employer, or (B) a contract, contract provision or other agreement between an employer and a customer of such employer that prohibits such customer from soliciting an employee of such employer to cease or reduce the extent to which such employee is doing business with the employer;

(12) "Separation from employment" means the date on which an employment relationship terminates between an employer or contractor and a worker;

(13) "Wages" has the same meaning as provided in section 31-58 of the general statutes; and

(14) "Worker" means an employee or an independent contractor.

Sec. 2. (NEW) (*Effective July 1, 2024*) (a) No covenant not to compete shall be enforceable against a worker unless the following conditions are met:

(1) The covenant not to compete restricts such worker's competitive activities for a period of not more than one year following the separation from employment, except a covenant not to compete may be enforceable for a period not to exceed two years following the separation from employment if such covenant not to compete is part of an agreement in which a worker is compensated with such worker's base salary and benefits, minus any outside compensation, for the entire duration of such covenant not to compete;

(2) The covenant not to compete is necessary to protect a legitimate business interest of the employer and such legitimate business interest could not reasonably be protected by less restrictive means, including, but not limited to, a nondisclosure agreement, a nonsolicitation agreement or reliance on the protections provided by the provisions of chapter 625 of the general statutes;

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

(4) The worker subject to the covenant not to compete is an exempt employee;

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

(6) The covenant not to compete contains a statement of the worker's rights under the covenant not to compete that contains the following:

(A) Not all covenants not to compete are enforceable;

(B) A covenant not to compete for a worker whose hourly wage is less than the amount described in subsection (b) of this section is illegal;

(C) A worker may contact the Attorney General if such worker believes they are subject to an illegal covenant not to compete; and

(D) A worker has the right to consult with counsel prior to signing a covenant not to compete;

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

(8) If the covenant not to compete is added to an existing employment or independent contractor agreement, the covenant not to compete is supported by sufficient consideration and is not the sole basis the continuation of such employment or contractor relationship;

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

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

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

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

(c) A covenant not to compete shall be unenforceable if such covenant not to compete applies to (1) geographic areas in which a worker neither provided services nor had a material presence or influence during such

worker's prior two years of employment, or (2) types of work that the worker did not perform during such worker's prior two years of employment.

Sec. 3. (NEW) (*Effective July 1, 2024*) (a) No employer or contractor shall request or require a worker to sign or agree to an exclusivity agreement unless:

(1) The worker is (A) an exempt employee whose hourly wage is more than three times the minimum fair wage, or (B) an independent contractor whose hourly wage is more than five times the minimum fair wage; or

(2) The worker's additional employment, self-employment or work as an independent contractor would (A) imperil the safety of such worker, such worker's coworkers or the public, or (B) substantially interfere with the reasonable and normal scheduling expectations for such worker. On-call shift scheduling shall not be considered a reasonable scheduling expectation for the purposes of this subdivision.

(b) Nothing in this section shall be construed to alter any obligations of a worker to an employer under existing law, including, but not limited to, the common law duty of loyalty, laws preventing conflicts of interest and any corresponding policies addressing such obligations.

Sec. 4. (NEW) (*Effective July 1, 2024*) (a) No court shall modify a covenant not to compete or an exclusivity agreement that violates the provisions of section 2 or 3 of this act for the purposes of enforcing such covenant not to compete or exclusivity agreement.

(b) If a covenant not to compete or an exclusivity agreement is held unenforceable under section 2 or 3 of this act, any severable provision of a contract or other agreement unrelated to such covenant not to compete shall remain in full force and effect, including, but not limited to, any provisions that require the payment of damages resulting from any injury suffered by separation from employment.

(c) The party seeking to enforce a covenant not to compete or an

exclusivity agreement against a worker shall have the burden of proof in any enforcement proceeding for such covenant not to compete or exclusivity agreement.

(d) The party required to compensate a worker in an agreement in which a worker is compensated with such worker's base salary and benefits, minus any outside compensation, for the entire duration of the covenant not to compete shall have the burden of proof in any proceeding to cease compensating a worker.

Sec. 5. (NEW) (*Effective July 1, 2024*) (a) Any worker aggrieved by a violation of the provisions of section 2 or 3 of this act may bring a civil action in the superior court for the judicial district where the violation is alleged to have occurred to recover damages, civil penalties and such equitable and injunctive relief as the court deems appropriate. Any person who prevails in such civil action may be awarded reasonable costs and attorney's fees to be taxed by the court.

(b) In any such action if the court finds that a covenant not to compete or an exclusivity agreement is in violation of sections 2 or 3 of this act, the court may assess a civil penalty against the violator in an amount not exceeding five thousand dollars.

Sec. 6. (NEW) (*Effective July 1, 2024*) (a) The Attorney General may 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, whenever any employer or contractor is or has engaged in a practice or pattern of conduct that:

(1) Subjects, or causes to be subjected, workers to a covenant not to compete that is in violation of section 2 of this act; or

(2) Subjects, or causes to be subjected, workers to an exclusivity agreement that is in violation of section 3 of this act.

(b) In conducting any investigation under this section, the Attorney General may issue subpoenas and interrogatories, and otherwise gather information, in the same manner and to the same extent as is provided

in section 35-42 of the general statutes. No information obtained pursuant to the provisions of this subsection may be used in a criminal proceeding.

(c) If the Attorney General prevails in a civil action brought pursuant to this section, the court shall order the distribution of any award of damages to the injured worker. The court may also award civil penalties against each defendant in an amount not exceeding five thousand dollars. Any civil penalty that is received pursuant to this subsection shall be deposited into the General Fund. No employer or contractor, officer or agent that is found to have violated the provisions of section 2 or 3 of this act shall be liable for an additional penalty under section 31-69 of the general statutes.

(d) In lieu of bringing a civil action under this section, the Attorney General may accept an assurance of the discontinuance of any alleged unlawful practice from any employer engaged in such practice. Thereafter, any evidence of a violation of such assurance shall constitute prima facie proof of a violation of the applicable law in any action commenced by the Attorney General.

(e) Nothing in this section shall permit the Attorney General to bring an action that would otherwise be barred under the applicable statute of limitations.

(f) The Attorney General shall post on the Attorney General's Internet web site information on how to file a complaint with the Attorney General for an alleged violation of section 2 or 3 of this act.

(g) Nothing in this section shall permit the Attorney General to assert any claim against a state agency or a state officer or state employee in such officer's or employee's official capacity, regarding actions or omissions of such state agency, state officer or state employee. If the Attorney General determines that a state officer or state employee is not entitled to indemnification under section 5-141d of the general statutes, the Attorney General may, as it relates to such officer of employee, take any action authorized under this section.

Sec. 7. Section 31-50a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2024*):

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

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

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

(c) The provisions of this section shall apply to agreements entered into, renewed or extended on or after October 1, 2007, and before July 1, 2024.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2024*	New section
Sec. 2	*July 1, 2024*	New section
Sec. 3	*July 1, 2024*	New section
Sec. 4	*July 1, 2024*	New section
Sec. 5	*July 1, 2024*	New section
Sec. 6	*July 1, 2024*	New section
Sec. 7	*July 1, 2024*	31-50a

Statement of Legislative Commissioners:

In Section 1(3)(D), "pursuant to" was changed to "described in" for accuracy, in Subdiv. (6), "the employer and" was added before "another employer" for accuracy, and Subdivs. (8) and (12) were rewritten for clarity; Section 2(a)(1) was rewritten for clarity, in Subsec. (a)(8), "relationship" was changed to "agreement" for accuracy and "not solely" was changed to "the sole basis" for clarity and accuracy, and in Subsec. (c), references to "last two years" were changed to "prior two years" for consistency with standard drafting conventions; in Section 3(a)(1), "monetary compensation" was changed to "hourly wage" for consistency; Section 4(d) was rewritten for clarity and consistency; in Section 5, Subdivs. (1) and (2) were changed to Subsecs. (a) and (b) for consistency with standard drafting conventions; in Section 6(a), "or contractor" was added after "employer" for consistency, in Subdivs. (a)(1) and (2), "other persons" was changed to "workers" for consistency, in Subsec. (c), "employee" was changed to "worker" for consistency, "or contractor" was added after "employer" for consistency, and "or other person" was removed for clarity and accuracy.

LAB *Joint Favorable Subst. -LCO*

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 263,000 cases in FY 23 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 noncompete 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
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)