Labor and Public Employees Committee
JOINT FAVORABLE REPORT

Bill No.: HB-5269
Title: AN ACT CONCERNING NONCOMPETE AGREEMENTS.
Vote Date: 3/7/2024
Vote Action: Joint Favorable
PH Date: 2/27/2024
File No.:

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SPONSORS OF BILL:

Labor and Public Employees Committee

REASONS FOR BILL:

This bill is intended to address misuse of noncompete agreements among low wage workers who do not possess industry-sensitive information. The bill bans new noncompete agreements for employees who are paid below three times the minimum wage and independent contracts who are paid below five times the minimum wage. It also bans noncompete agreements when a worker leaves for "good cause" and does not allow such agreements to last longer than 1 year.

RESPONSE FROM ADMINISTRATION/AGENCY:

Patrick Hulin, Deputy Policy Director, Governor's Office: The governor's office believes that the current use of noncompete agreements is a detriment to the opportunities of workers, damages businesses ability to innovate, and depresses wages. Right now, 18% of workers and 14% of low-wage workers are in a noncompete agreement nationally and are being applied by employers too broadly. Additionally, this bill would limit noncompete agreements to workers that have more bargaining power and emphasizes how this bill would add additional restrictions around noncompete agreements that are still allowed under this bill. According to research noncompete agreements have reduced entrepreneurship by as much as 18% and removing noncompete agreements can lead to a 4-5% wage increase. The governor's office points to existing and current legislation in other states that has been successful and while there has been interest in national legislation, Connecticut shouldn't wait for this potentially slow process.

NATURE AND SOURCES OF SUPPORT:

Lew Chimes, Attorney: Chimes voices his support of the bill citing his belief in competition and explains how noncompete agreements are detrimental to said competition, allowing employers to terminate them at will but not allowing the employee to move at will. Chimes talks specifically about low-income workers and how noncompete agreements bring little value to the employer in these cases but damaging for the worker who is unable to leave or continue to work in the field if fired. Chimes also believes that noncompete agreements damage entrepreneurship. Chimes also suggests an amendment be added that prevents noncompete agreements from being enforceable when employers discharge and employee. Chimes believes that even with these changes' businesses will still be able to protect their information through their existing rights such as the ability to prohibit former employees from soliciting former customers.

Terri Gerstein Director, NYU Wagner Labor Initiative: Gerstein voices her support of the bill stating that people find themselves trapped in jobs, that are often hostile, out of fear of being sued if they get a new position. Additionally, Gerstein points to research that shows that noncompete agreements reduce entrepreneurialism and "economic dynamism" and can have unintended consequences in some industries like healthcare where patients' ability to see specific doctors can be restricted. New studies have shown that in states that restrict non have seen increases in innovation that can be seen in things like an increase in patents. Gerstein also adds that the threshold for noncompete agreements should be higher than is listed in the bill, citing that Washington's roll out of similar legislation at $120,000 and the lack of raised wages among workers who were close to the threshold shows the little value they bring the company under that threshold. Overall, Gerstein supports how the bill prohibits noncompete agreements instead of making them unenforceable to prevent overreach, applies to both employees and contractors, increases fairness for permittable noncompete agreements, and allows for penalties making the bill enforceable.

Ed Hawthorne, President, Connecticut AFL-CIO: Hawthorne voices his support of the bill pointing to the increasing use of noncompete among low wage workers to artificially reduce wages and ultimately slow economic growth. Hawthorne points at the FTC recent work with noncompete agreements and action that could move to put federal regulation on them in the spring. Hawthorne is also concerned that the threshold is not high enough to cover workers with no managerial responsibilities but is still in overall support of the bill.

Tanya Hughes, Executive Director, CHRO: Hughes voices her support of the bill, believing that restricting noncompete agreements will reduce discrimination in the workplace by preventing workers from becoming trapped. Employees often feel trapped and unable to speak out in the workplace on issues like racial discrimination or sexual harassment because they feel that doing so would put their livelihoods at risk. Noncompete agreements can be a large part of that trap forcing specialized workers to stay at jobs with hostile workplaces where they may face discrimination because switching jobs within their field may not be possible.

Sara Parker McKernan, Legislative Policy Advocate, New Haven Legal Assistance: Noncompete clauses were traditionally used to protect trade secrets and were typically for executives and high paying manager positions but in recent years have become common among all fields. 55% of US companies cover all hourly workers with a noncompete with no regard to whether they have access to important company information. Some of the positions being forced into noncompete agreements despite having to sensitive information include

home health care workers, housecleaners, food service staff, caretakers in group homes or nursing facilities, hair stylists and auto mechanics." Given this information McKernan believes that it is important to prohibit noncompete agreements for low wage workers with low bargaining power.

Roger Senserrich, Policy Director, CT Working Families Power: Senserrich voices his belief that noncompete agreements have been misused as a tool to restrict wages and should be banned among low wage workers.

Josh Goodbaum, CT Attorney, Trial Lawyers Association: Goodbaum believes that noncompete agreements are unfair in CT as all employment is "at-will", this is undermined by noncompete agreements allowing only employers to be at-will while restricting workers right to freely move jobs. This restriction of movement also reduces bargaining power and reduces wage growth which Goodbaum says he has seen firsthand among clients. Goodbaum supports this bill as it limits noncompete agreements to a reasonable scope (currently noncompete caselaw are a "mess" and leads to unclear outcomes), restricts noncompete agreements to high income workers, provides employees with notice, and clarifies that employees can litigate their noncompete agreements.

Keri Hoehne, Executive Vice President, UFCW Local 371: Hoehne supports the bill, citing the use of noncompete agreements among low wage workers who are expected to be fully available to work for companies not paying them a living wage and through these agreements are unable to find secondary jobs or higher paying jobs leading to wages being suppressed.

Emily Sabo, Organizing Director UFCW Local 919: Sabo supports the bill, believing that how noncompete agreements are being used currently is inappropriate. Sabo specifically highlights cannabis workers as an example of the problems with noncompete agreements. Many cannabis companies have been using noncompete agreements which Sabo believes is inappropriate as cannabis workers are already undertaking a lot of risk by working in a federally unrecognized field. Cannabis workers often have difficulty getting a bank loan or entering other fields due to stigma, meaning they are often stuck within the cannabis field making them more vulnerable to the downsides of a noncompete agreement.

NATURE AND SOURCES OF OPPOSITION:

Ashley Zane Senior Public Policy Associate, CBIA: Zane voices her opposition of the bill, while she agrees that some noncompete agreements are inappropriate she believes the bill removes noncompete agreements for important circumstances. Additionally, Zane believes that the threshold should not be tied to the minimum wage as that would make it dynamic and invalidate valid noncompete agreements overtime. She points specifically to positions that use location and durationally limited noncompete agreements like: "hair care professionals, golf course pros, and even members of the clergy." Zane is also concerned that the bills language, specifically with the idea of noncompete agreements being invalidated by the employee have good cause to end the employment. This could lead to an employee without a valid reason to break the noncompete causing harm to the company before the claim could be invalidated in a court of law. Overall, Zane believes that noncompete and exclusivity agreements are important for protecting companies and already regulated enough by courts and thus opposes the bill.

Brooke Foley, Counsel Insurance Association of CT: Foley believes that noncompete agreements are important to businesses in order to "protect trade secrets, client lists, new technologies, business practices, and other sensitive, confidential, and proprietary information." Foley is specifically concerned with tying the threshold for noncompete agreements to the minimum wage as low wage workers can still possess sensitive information and the language of "good cause" believing that workers could break a noncompete agreement without proper cause, leaking information before being reviewed by the courts.

Rory Whelan, Regional Vice President, NAMIC: Whelan opposes the bill out of a belief that it may have "grave, unintended implications," for insurance agents. Whelan is specifically concerned with independent agents who may sell policies from an array of companies. Insurance companies are unaware whether independent agents are making five time the minimum wage making it difficult for either party to know whether a noncompete agreement could be upheld. Additionally, Whelan is concerned with the definition of exclusivity as current independent agents may only "may market and solicit applications only for one insurer’s products and a handful of alliance products." Under the current language this bill could void this agreement between independent agents and insurance companies which would be problematic for both parties. Due to these potential issues Whelan requests that section three be amended to make these prohibitions not apply to licensed insurance agents.

Reported by: Noah Gulla **Date: 3/11/2024**