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) "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;

(2) "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, pursuant to 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;

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

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

(5) "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 another employer, working as an independent contractor or being self-employed;

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

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

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

(10) "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;

(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 the employer to leave the employer, or (ii) any customer of the 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 the 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 or independent contractor relationship ends;

(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;

(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 relationship, the covenant not to compete is supported by sufficient consideration and is not solely 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 applies to (1) geographic areas in which a worker neither provided services nor had a material presence or influence during such worker's last two years of employment, or (2) types of work that the worker did not perform during such worker's last two years of employment.

(d) Notwithstanding the provisions of subdivision (1) of subsection (a) of this section, a covenant not to compete shall be enforceable for a period of not more than two years following 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.

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 monetary compensation is more than three times the minimum fair wage, or (B) an independent contractor whose monetary compensation 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
described in subsection (d) of section 2 of this act shall have the burden
of proof in any proceeding to cease compensating a worker.

Sec. 5. (NEW) (Effective July 1, 2024) (1) 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.

(2) 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 is or has
engaged in a practice or pattern of conduct that:

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

(2) Subjects, or causes to be subjected, other persons 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 employee. 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 in the General Fund. No employer, officer, agent or other person 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:

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<tr>
<th>Section</th>
<th>Effective Date</th>
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<tbody>
<tr>
<td>Sec. 1</td>
<td>July 1, 2024</td>
<td>New section</td>
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<td>Sec. 2</td>
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<td>Sec. 7</td>
<td>July 1, 2024</td>
<td>31-50a</td>
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Statement of Purpose:
To prohibit the use of noncompete agreements and exclusivity agreements unless they meet certain requirements.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]