



General Assembly

February Session, 2024

Raised Bill No. 5269

LCO No. 1047



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

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, 2024*) As used in this section and
2 sections 2 to 6, inclusive, of this act:

3 (1) "Base salary and benefits" means (A) wages earned over the course
4 of the prior calendar year, excluding any overtime or bonus
5 compensation, and (B) health insurance benefits and other fringe
6 benefits received by an employee over the course of the prior calendar
7 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, 2024, that restrains a worker from, or imposes penalties on a worker
11 for, engaging in any lawful profession, occupation, trade, calling or
12 business of any kind in any geographic area of the state, for any period
13 of time after separation from employment. "Covenant not to compete"
14 does not mean (A) a nonsolicitation agreement, provided such
15 agreement (i) does not restrict a worker's activities for more than one

16 year, and (ii) is no more restrictive than necessary in duration,
17 geographic scope, type of work and type of employer, (B) a
18 nondisclosure or confidentiality agreement, (C) a contract, contract
19 provision or other agreement in which an employee agrees to not
20 reapply for employment with an employer after being terminated by
21 such employer, (D) any covenant not to compete, pursuant to sections
22 20-14p, 20-670 and 31-50b of the general statutes, or (E) any contract,
23 contract provision or other agreement made either (i) in anticipation of
24 a sale of the goodwill of a business or all of the seller's ownership
25 interest in a business, or (ii) as part of a partnership or ownership
26 agreement;

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

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

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

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

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

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

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

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

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

69 (12) "Separation from employment" means the date on which an
70 employment or independent contractor relationship ends;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (8) If the covenant not to compete is added to an existing employment
111 or independent contractor relationship, the covenant not to compete is
112 supported by sufficient consideration and is not solely the continuation
113 of such employment or contractor relationship;

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

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

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

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

126 (c) A covenant not to compete shall be unenforceable if such covenant
127 applies to (1) geographic areas in which a worker neither provided
128 services nor had a material presence or influence during such worker's
129 last two years of employment, or (2) types of work that the worker did
130 not perform during such worker's last two years of employment.

131 (d) Notwithstanding the provisions of subdivision (1) of subsection
132 (a) of this section, a covenant not to compete shall be enforceable for a
133 period of not more than two years following separation from
134 employment if such covenant not to compete is part of an agreement in
135 which a worker is compensated with such worker's base salary and

136 benefits, minus any outside compensation, for the entire duration of
137 such covenant not to compete.

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

141 (1) The worker is (A) an exempt employee whose monetary
142 compensation is more than three times the minimum fair wage, or (B)
143 an independent contractor whose monetary compensation is more than
144 five times the minimum fair wage; or

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

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

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

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

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

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

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

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

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

183 Sec. 6. (NEW) (*Effective July 1, 2024*) (a) The Attorney General may
184 investigate, intervene or bring a civil action in the name of the state,
185 seeking injunctive or declaratory relief, damages and any other relief
186 that may be available under law, whenever any employer is or has
187 engaged in a practice or pattern of conduct that:

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

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

192 (b) In conducting any investigation under this section, the Attorney
193 General may issue subpoenas and interrogatories, and otherwise gather
194 information, in the same manner and to the same extent as is provided
195 in section 35-42 of the general statutes. No information obtained

196 pursuant to the provisions of this subsection may be used in a criminal
197 proceeding.

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

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

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

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

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

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

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

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

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

245 (c) The provisions of this section shall apply to agreements entered
246 into, renewed or extended on or after October 1, 2007, and before July 1,
247 2024.

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

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.]