



General Assembly

February Session, 2024

Substitute Bill No. 5269



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

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

19 (3) "Covenant not to compete" means a contract, provision or other

20 agreement entered into, amended, extended or renewed on or after July
21 1, 2024, that restrains a worker from, or imposes penalties on a worker
22 for, engaging in any lawful profession, occupation, trade, calling or
23 business of any kind in any geographic area of the state, for any period
24 of time after separation from employment. "Covenant not to compete"
25 does not mean (A) a nonsolicitation agreement, provided such
26 agreement (i) does not restrict a worker's activities for more than one
27 year, and (ii) is no more restrictive than necessary in duration,
28 geographic scope, type of work and type of employer, (B) a
29 nondisclosure or confidentiality agreement, (C) a contract, contract
30 provision or other agreement in which an employee agrees to not
31 reapply for employment with an employer after being terminated by
32 such employer, (D) any covenant not to compete, described in sections
33 20-14p, 20-670 and 31-50b of the general statutes, or (E) any contract,
34 contract provision or other agreement made either (i) in anticipation of
35 a sale of the goodwill of a business or all of the seller's ownership
36 interest in a business, or (ii) as part of a partnership or ownership
37 agreement;

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

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

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

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

50 (8) "Hourly wage" means, in the case of an hourly employee, such

51 employee's wages calculated on an hourly basis or, for any other
52 employee, annualized monetary compensation converted to an hourly
53 rate by dividing such monetary compensation by two thousand eighty;

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

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

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

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

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

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

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

79 (1) The covenant not to compete restricts such worker's competitive

80 activities for a period of not more than one year following the separation
81 from employment, except a covenant not to compete may be enforceable
82 for a period not to exceed two years following the separation from
83 employment if such covenant not to compete is part of an agreement in
84 which a worker is compensated with such worker's base salary and
85 benefits, minus any outside compensation, for the entire duration of
86 such covenant not to compete;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

133 (c) A covenant not to compete shall be unenforceable if such covenant
134 not to compete applies to (1) geographic areas in which a worker neither
135 provided services nor had a material presence or influence during such
136 worker's prior two years of employment, or (2) types of work that the
137 worker did not perform during such worker's prior two years of

138 employment.

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

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

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

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

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

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

166 (c) The party seeking to enforce a covenant not to compete or an
167 exclusivity agreement against a worker shall have the burden of proof

168 in any enforcement proceeding for such covenant not to compete or
169 exclusivity agreement.

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

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

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

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

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

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

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

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

201 (c) If the Attorney General prevails in a civil action brought pursuant
202 to this section, the court shall order the distribution of any award of
203 damages to the injured worker. The court may also award civil penalties
204 against each defendant in an amount not exceeding five thousand
205 dollars. Any civil penalty that is received pursuant to this subsection
206 shall be deposited into the General Fund. No employer or contractor,
207 officer or agent that is found to have violated the provisions of section 2
208 or 3 of this act shall be liable for an additional penalty under section 31-
209 69 of the general statutes.

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

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

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

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

229 any action authorized under this section.

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

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

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

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

248 (c) The provisions of this section shall apply to agreements entered
249 into, renewed or extended on or after October 1, 2007, and before July 1,
250 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 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; Section 4(d) was rewritten for clarity and consistency; in Section 3(a)(1), "monetary compensation" was changed to "hourly wage" for 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*