



General Assembly

**Substitute Bill No. 906**

January Session, 2021



**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, 2021*) For purposes of sections 1 to  
2 4, inclusive, of this act:

3 (1) "Base salary and benefits" means (A) wages, as defined in section  
4 31-71a of the general statutes, earned over the course of the prior  
5 calendar year, without consideration of any overtime or bonus  
6 compensation, and (B) health insurance benefits and other fringe  
7 benefits received by an employee over the course of the prior calendar  
8 year;

9 (2) "Covenant not to compete" means a contract, provision or  
10 agreement entered into, amended, extended or renewed on or after July  
11 1, 2021, that restrains a worker from, or imposes penalties on a worker  
12 for, engaging in any lawful profession, occupation, trade, calling or  
13 business of any kind in any geographic area of the state for any period  
14 of time after separation from employment, but does not mean (A) a  
15 nonsolicitation agreement, provided such agreement (i) does not restrict  
16 a worker's activities for more than one year, and (ii) is no more  
17 restrictive than necessary in duration, geographic scope, type of work  
18 and type of employer, (B) a nondisclosure or confidentiality agreement,

19 (C) a contract, provision or agreement in which an employee agrees not  
20 to reapply for employment with an employer after being terminated by  
21 such employer, (D) any covenant not to compete, as defined in section  
22 20-14p or 20-681 of the general statutes or as described in section 31-50b  
23 of the general statutes, or (E) any contract, provision or agreement made  
24 (i) in anticipation of a sale of the goodwill of a business or all of the  
25 seller's ownership interest in a business, or (ii) as part of a partnership  
26 or ownership 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, provision or agreement  
32 entered into, amended, extended or renewed on or after July 1, 2021,  
33 that restrains a worker from, or imposes penalties on a worker for,  
34 having an additional job, supplementing the worker's income by  
35 working for another employer, working as an independent contractor  
36 or being self-employed;

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

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

43 (8) "Monetary compensation" means (A) wages, as defined in section  
44 31-71a of the general statutes, earned over the course of the prior  
45 calendar year or portion thereof, for which the employee was employed,  
46 annualized based on the period of employment and calculated as of the  
47 earlier of the date enforcement of the covenant not to compete is sought  
48 or the date of separation from employment, and (B) payments made to  
49 independent contractors based on services rendered, annualized based

50 on the period during which the independent contractor provided  
51 services and calculated as of the earlier of the date enforcement of the  
52 covenant not to compete is sought or the date of separation from  
53 employment;

54 (9) "Nonsolicitation agreement" means (A) a contract, provision or  
55 agreement between an employer and employee that prohibits  
56 solicitation by an employee, upon termination of employment, of (i) any  
57 employee of the employer to leave the employer, or (ii) any customer of  
58 the employer to cease or reduce the extent to which it is doing business  
59 with the employer, or (B) a contract, provision or agreement between an  
60 employer and any customer thereof that prohibits solicitation by the  
61 customer of an employee of the employer to cease or reduce the extent  
62 to which it is doing business with the employer;

63 (10) "Separation from employment" means any event in which an  
64 employment or independent contractor relationship ends; and

65 (11) "Worker" means an employee or an independent contractor.

66 Sec. 2. (NEW) (*Effective July 1, 2021*) (a) No employer or contractor  
67 may request or require a worker to sign or agree to a covenant not to  
68 compete and any such covenant not to compete shall not be enforceable  
69 against such worker unless all of the following conditions are met: (1)  
70 Such covenant does not restrict the worker's competitive activities for a  
71 period of more than one year following the termination or separation of  
72 the employee; (2) such covenant is necessary to protect a legitimate  
73 business interest of the employer and such business interest could not  
74 reasonably be protected by less restrictive means, including, but not  
75 limited to, a nondisclosure agreement, nonsolicitation agreement, or  
76 reliance on the protections provided by the provisions of chapter 625 of  
77 the general statutes; (3) such covenant is no more restrictive than  
78 necessary to protect such business interest in terms of the covenant's  
79 duration, geographic scope, type of work and type of employer; (4) such  
80 worker is an exempt employee; (5) the written text of such covenant is  
81 provided to the worker not later than ten business days prior to the

82 earlier of (A) the worker's deadline to accept an offer from the employer  
83 or the contractor for employment or to enter into an independent  
84 contractor relationship, or (B) the date such covenant is signed; (6) such  
85 covenant contains a statement of the worker's rights regarding  
86 covenants not to compete, including that (A) not all covenants not to  
87 compete are enforceable, (B) covenants not to compete for workers  
88 earning less than the threshold provided in subsection (b) of this section  
89 are illegal, (C) the worker may contact the Attorney General if the  
90 worker is subject to an illegal covenant not to compete, and (D) the  
91 worker has the right to consult with counsel prior to signing the  
92 covenant not to compete; (7) such covenant is signed by the worker and  
93 the employer or contractor separately from any other agreement  
94 underlying the relationship between the worker and the employer or  
95 contractor; (8) if such covenant is added to an existing employment or  
96 independent contractor relationship, it is supported by sufficient  
97 consideration independent from continuation of the employment or  
98 contractor relationship; (9) the employment or contractual relationship  
99 was not terminated by the worker for good cause attributable to the  
100 employer or contractor; (10) such covenant does not require the worker  
101 to submit to adjudication in a forum outside of this state or otherwise  
102 purport to deprive the worker of the protections or benefits of this  
103 section; and (11) such covenant does not unreasonably interfere with the  
104 public's interests and is consistent with the provisions of this section,  
105 other laws of this state and public policy.

106 (b) No employer or contractor may request or require a worker to  
107 sign or agree to a covenant not to compete, and any such covenant not  
108 to compete shall be unenforceable against such worker, if such worker  
109 is an employee earning monetary compensation of less than three times  
110 the minimum fair wage, as defined in section 31-58 of the general  
111 statutes, or such worker is an independent contractor earning monetary  
112 compensation of less than five times said minimum fair wage.

113 (c) A covenant not to compete that applies to geographic areas in  
114 which a worker neither provided services nor had a material presence

115 or influence within the last two years of employment, or that applies to  
116 types of work that the worker did not perform during the last two years  
117 of employment, shall be presumed entirely unenforceable.

118 (d) Notwithstanding the provisions of subdivision (1) of subsection  
119 (a) of this section, a covenant not to compete shall be permitted and  
120 enforceable for a period of no longer than two years following  
121 separation from employment if such covenant is a part of an agreement  
122 under which the worker is compensated with the worker's base salary  
123 and benefits, minus any outside compensation, for the entire period of  
124 such covenant.

125 Sec. 3. (NEW) (*Effective July 1, 2021*) (a) No employer or contractor  
126 may request or require a worker to sign or agree to an exclusivity  
127 agreement, unless (1) the worker is an exempt employee earning  
128 monetary compensation of more than three times the minimum fair  
129 wage, as defined in section 31-58 of the general statutes, or (2) the  
130 worker is an independent contractor earning monetary compensation of  
131 more than five times said minimum fair wage.

132 (b) An exclusivity agreement may be permitted if a worker having an  
133 additional job, supplementing his or her income by working for another  
134 employer, working as an independent contractor or being self-  
135 employed would: (1) Imperil the safety of the worker, the worker's  
136 coworkers or the public; or (2) substantially interfere with the  
137 reasonable and normal scheduling expectations of the employer or  
138 contractor, provided on-call shift scheduling shall not be considered a  
139 reasonable scheduling expectation for the purposes of this subdivision.

140 (c) The provisions of this section shall not be construed to alter any  
141 obligations of an employee to an employer under existing law,  
142 including, but not limited to, the common law duty of loyalty and laws  
143 preventing conflicts of interest and any corresponding policies  
144 addressing such obligations.

145 Sec. 4. (NEW) (*Effective July 1, 2021*) (a) The party seeking to enforce

146 a covenant not to compete or an exclusivity agreement against a worker  
147 shall have the burden of proof in any enforcement proceeding. The  
148 party required to continue to compensate an employee or independent  
149 contractor in an agreement under subsection (d) of section 2 of this act  
150 shall have the burden of proof in any proceeding to enforce such  
151 requirement to continue to compensate such employee or independent  
152 contractor.

153 (b) No court shall judicially modify a covenant not to compete that  
154 violates the provisions of sections 1 to 3, inclusive, of this act, in order  
155 to partially enforce such covenant.

156 (c) Any severable provisions of any contract or agreement that  
157 includes a covenant not to compete or an exclusivity agreement that is  
158 held unenforceable under the provisions of sections 1 to 3, inclusive, of  
159 this act, shall remain in full force and effect, including, but not limited  
160 to, any provisions that require the payment of damages resulting from  
161 any injury suffered by reason of termination or separation of  
162 employment.

163 (d) The Attorney General, on behalf of a worker or workers, or any  
164 worker aggrieved by a violation of any provision of sections 1 to 3,  
165 inclusive, of this act, may bring a civil action in the Superior Court for  
166 any and all relief provided in this section.

167 (e) If a court or an arbitrator determines that a covenant not to  
168 compete or an exclusivity agreement violates any provision of sections  
169 1 to 3, inclusive, of this act, the violator shall be liable for the greater of  
170 the aggrieved worker's actual damages or a penalty of five thousand  
171 dollars, in addition to reasonable attorney's fees, expenses and court  
172 costs.

173 (f) Notwithstanding section 31-69a of the general statutes, no  
174 employer, officer, agent or other person who violates any provision of  
175 this section shall be liable to the Labor Department for a civil penalty.

176 Sec. 5. Section 31-50a of the general statutes is repealed and the

177 following is substituted in lieu thereof (*Effective July 1, 2021*):

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

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

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

194 (c) The provisions of this section shall apply to agreements entered  
195 into, renewed or extended on or after October 1, 2007, and before July 1,  
196 2021.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2021</i>	New section
Sec. 2	<i>July 1, 2021</i>	New section
Sec. 3	<i>July 1, 2021</i>	New section
Sec. 4	<i>July 1, 2021</i>	New section
Sec. 5	<i>July 1, 2021</i>	31-50a

**Statement of Legislative Commissioners:**

In Section 1(3), "20-14p, 20-681 or 31-50b" was changed to 20-14p or 20-681 of the general statutes or as described in section 31-50b" for accuracy and consistency with standard drafting conventions; in Section 1(5),

"their" was changed to "the worker's" for clarity and consistency with standard drafting conventions; in Section 1(8), "calendar" was added before "year" for clarity; in Section 1(10) "at" was changed to "in" for clarity and accuracy; in Section 2(a)(2), "nondisclosure agreement, nonsolicitation agreement" was changed to "nondisclosure or nonsolicitation agreement" for conciseness; Section 2(a)(5) was rewritten for clarity; in Section 2(a)(6)(B), "in subdivision (4) of this subsection" was changed to "provided in subsection (b) of this section" for accuracy; in Section 2(a)(7), "between the worker and the employer or contractor" was added after "relationship" for clarity; in Section 2(a)(10), "Connecticut" was changed to "this state" for consistency with standard drafting conventions; in Section 2(a)(11), "the provisions of" was inserted before "this" for clarity; in Section 2(b), "Even if otherwise valid under the provisions of this section" was deleted for consistency with standard drafting conventions and "not be enforceable" was changed to "be unenforceable" for clarity; in Section 2(c), "Even if otherwise valid under this section" was deleted for consistency with standard drafting conventions; Section 3(a) was divided into Subdivs. for clarity; in Section 3(b), "This section shall not apply when" was changed to "An exclusivity agreement may be permitted if" for clarity; in Section 3(c), "The provisions of" was added before "This section" for accuracy and consistency with standard drafting conventions; in Section 4(a), "subsection (c)" was changed to "subsection (d)" for accuracy; in Section 4(e), "statutory" was deleted for consistency with standard drafting conventions.

**LAB**      *Joint Favorable Subst.*