

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 538 - L.D. 733

An Act To Promote Keeping Workers in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §§599-A and 599-B are enacted to read:

§599-A. Noncompete agreements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Federal poverty level" means the nonfarm income official poverty line for an individual, as defined by the federal Office of Management and Budget and revised annually in accordance with the Omnibus Budget Reconciliation Act of 1981, Section 673(2).

B. "Noncompete agreement" means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment.

2. Public policy; enforceability of noncompete agreements. Noncompete agreements are contrary to public policy and are enforceable only to the extent that they are reasonable and are no broader than necessary to protect one or more of the following legitimate business interests of the employer:

A. The employer's trade secrets, as defined in Title 10, section 1542, subsection 4;

B. The employer's confidential information that does not qualify as a trade secret; or

C. The employer's goodwill.

A noncompete agreement may be presumed necessary if the legitimate business interest cannot be adequately protected through an alternative restrictive covenant, including but not limited to a nonsolicitation agreement or a nondisclosure or confidentiality agreement.

3. Prohibited for certain workers. Notwithstanding subsection 2, an employer may not require or permit an employee earning wages at or below 400% of the federal poverty level to enter into a noncompete agreement with the employer.

4. Disclosure; notice. An employer shall disclose prior to an offer of employment with the employer that will require the acceptance of a noncompete agreement a statement that a noncompete agreement will be required.

An employer shall notify an employee or prospective employee of a noncompete agreement requirement and provide a copy of the noncompete agreement not less than 3 business days before the employer requires the agreement to be signed to allow time for the employee or prospective employee to review the agreement and negotiate the terms of the agreement or employment with the employer if the employee or prospective employee wishes to do so.

5. Effective date of a noncompete agreement. Except for a noncompete agreement between an employer and an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, the terms of a noncompete agreement do not take effect until after one year of the employee's employment with the employer or a period of 6 months from the date the agreement was signed, whichever is later.

6. Penalty; enforcement. An employer that violates subsection 3 or 4 commits a civil violation for which a fine of not less than \$5,000 may be adjudged. The Department of Labor is responsible for enforcement of this section.

7. Application. This section applies to all noncompete agreements entered into or renewed after the effective date of this section.

§599-B. Restrictive employment agreements

1. Definition. For purposes of this section, "restrictive employment agreement" means an agreement that:

- A. Is between 2 or more employers, including through a franchise agreement or a contractor and subcontractor agreement; and
- B. Prohibits or restricts one employer from soliciting or hiring another employer's employees or former employees.

2. Restrictive employment agreements prohibited. An employer may not:

- A. Enter into a restrictive employment agreement; or
- B. Enforce or threaten to enforce a restrictive employment agreement.

3. Penalty; enforcement. An employer that violates subsection 2 commits a civil violation for which a fine of not less than \$5,000 may be adjudged. The Department of Labor is responsible for enforcement of this section.