

JAN 18 2013

S.B. NO. 353

A BILL FOR AN ACT

RELATING TO RESTRAINTS OF TRADE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 480-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§480-4 Combinations in restraint of trade, price-fixing**
4 **and limitation of production prohibited.** (a) Every contract,
5 combination in the form of trust or otherwise, or conspiracy, in
6 restraint of trade or commerce in the State, or in any section
7 of this State is illegal.

8 (b) Without limiting the generality of the foregoing no
9 person, exclusive of members of a single business entity
10 consisting of a sole proprietorship, partnership, trust, or
11 corporation, shall agree, combine, or conspire with any other
12 person or persons, or enter into, become a member of, or
13 participate in, any understanding, arrangement, pool, or trust,
14 to do, directly or indirectly, any of the following acts, in the
15 State or any section of the State:

16 (1) Fix, control, or maintain, the price of any commodity;

17 (2) Limit, control, or discontinue, the production,

18 manufacture, or sale of any commodity for the purpose



1 or with the result of fixing, controlling or
2 maintaining its price;

3 (3) Fix, control, or maintain, any standard of quality of
4 any commodity for the purpose or with the result of
5 fixing, controlling, or maintaining its price;

6 (4) Refuse to deal with any other person or persons for
7 the purpose of effecting any of the acts described in
8 (1) to (3) of this subsection.

9 (c) Notwithstanding the foregoing subsection (b) and
10 without limiting the application of the foregoing subsection (a)
11 it shall be lawful for a person to enter into any of the
12 following restrictive covenants or agreements ancillary to a
13 legitimate purpose not violative of this chapter, unless the
14 effect thereof may be substantially to lessen competition or to
15 tend to create a monopoly in any line of commerce in any section
16 of the State:

17 (1) A covenant or agreement by the transferor of a
18 business not to compete within a reasonable area and
19 within a reasonable period of time in connection with
20 the sale of the business;

21 (2) A covenant or agreement between partners not to
22 compete with the partnership within a reasonable area



1 and for a reasonable period of time upon the
2 withdrawal of a partner from the partnership;

3 (3) A covenant or agreement of the lessee to be restricted
4 in the use of the leased premises to certain business
5 or agricultural uses, or covenant or agreement of the
6 lessee to be restricted in the use of the leased
7 premises to certain business uses and of the lessor to
8 be restricted in the use of premises reasonably
9 proximate to any such leased premises to certain
10 business uses;

11 (4) A covenant or agreement by an employee or agent not to
12 use the trade secrets of the employer or principal in
13 competition with the employee's or agent's employer or
14 principal, during the term of the agency or
15 thereafter, or after the termination of employment,
16 within such time as may be reasonably necessary for
17 the protection of the employer or principal, without
18 imposing undue hardship on the employee or agent.

19 (d) Notwithstanding subsections (b) and (c) to the
20 contrary and without limiting the application of subsection (a),
21 any covenant or agreement that is executed by an employee or
22 agent after the commencement of employment or term of agency as



1 a condition of employment or continued employment shall be
2 prohibited and may not be enforced by a court of this State."

3 SECTION 2. New statutory material is underscored.

4 SECTION 3. This Act shall take effect upon its approval.

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S.B. NO. 363

Report Title:

Restrictive Covenants or Agreements; Covenants not to Compete;
Employees and Employers

Description:

Prohibits post-employment restrictive covenants or agreements executed by an employee or agent after the commencement of employment as a condition of employment or continued employment.

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