
A BILL FOR AN ACT

RELATING TO EMPLOYMENT AGREEMENTS.

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

1 SECTION 1. The legislature finds that postemployment
2 restrictive covenants impede the development of businesses
3 within the State by driving skilled workers to other
4 jurisdictions and by requiring local businesses to solicit from
5 out of the State. Eliminating restrictive covenants for
6 licensed physicians and employees of the technology business
7 sector will stimulate Hawaii's economy by preserving and
8 providing jobs for employees in these sectors and by providing
9 opportunities for those employees to establish new companies and
10 new job opportunities in the State.

11 A restrictive covenant not to compete with a former
12 employer imposes a special hardship on employees of technology
13 businesses and licensed physicians, as these highly specialized
14 professionals are trained to perform specific jobs in the
15 industry. Because the geographic area of Hawaii is unique and
16 limited, noncompete agreements unduly restrict future employment
17 opportunities for these workers and have a chilling effect on



1 the creation of new businesses within the State by innovative
2 employees.

3 Hawaii has a strong public policy promoting the growth of
4 new businesses in the economy, and academic studies have
5 concluded that embracing employee mobility is a superior
6 strategy for nurturing an innovation-based economy. In
7 contrast, a noncompete atmosphere hinders innovation, creates a
8 restrictive work environment for technology employees in the
9 State, and forces spin-offs of existing technology companies to
10 choose places other than Hawaii to establish their businesses.

11 In *Technicolor, Inc v. Traeger*, 57 Haw. 113, 551 P. 2d 163
12 (1976), the Hawaii supreme court ruled that noncompete covenants
13 and agreements which are not per se violations under section
14 480-4(b), Hawaii Revised Statutes, may be enforced in Hawaii as
15 long as they pass a "reasonableness analysis". Employers' trade
16 secrets are already protected under the federal Uniform Trade
17 Secrets Act and under section 480-4(c)(4), Hawaii Revised
18 Statutes, therefore, the benefits to the employer of noncompete
19 or nonsolicit agreements are unnecessary and overreaching
20 protections that unreasonably impose undue hardship upon
21 employees of technology businesses and the Hawaii economy.



1 The purpose of this Act is to stimulate Hawaii's economy by
2 prohibiting noncompete agreements and restrictive covenants that
3 forbid post-employment competition of employees of a technology
4 business or licensed physicians.

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

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

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

- 20 (1) Fix, control, or maintain, the price of any commodity;
21 (2) Limit, control, or discontinue, the production,
22 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 paragraphs (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) Except as provided in subsection (c)(4), any
20 employment contract, post-employment contract, or separation
21 agreement containing a noncompete or nonsolicit clause relating
22 to an employee of a technology business or a licensed physician



1 is prohibited. Such agreement shall be void and of no force and
2 effect.

3 As used in this subsection:

4 "Information technology" means any equipment or
5 interconnected system or subsystem of equipment that is used in
6 the automatic acquisition, storage, manipulation, management,
7 movement, control, display, switching, interchange,
8 transmission, or reception of data or information. The term
9 includes computers, ancillary equipment, software, firmware and
10 similar procedures, services, and support services, and related
11 resources.

12 "Licensed physician" means a physician or osteopathic
13 physician licensed by the Hawaii medical board pursuant to
14 chapter 453.

15 "Noncompete clause" means a clause in an employment
16 contract, post-employment contract, or separation agreement that
17 prohibits an employee from working in a specific geographic area
18 for a specific period of time after leaving employment with the
19 employer.

20 "Nonsolicit clause" means a clause in an employment
21 contract, post-employment contract, or separation agreement that



1 prohibits an employee from soliciting employees of the employer
2 after leaving employment with the employer.

3 "Software development" means the creation of coded computer
4 instructions.

5 "Technology business" means a trade or business that relies
6 on software development, information technology, or both.

7 This subsection shall apply to all written, binding
8 noncompete and nonsolicit clauses entered into after June 30,
9 2014, and to all amendments adding or amending noncompete and
10 nonsolicit clauses in existing written agreements created prior
11 to July 1, 2014."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

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



Report Title:

Technology; Licensed Physicians; Employment Covenants or Agreements

Description:

Prohibits noncompete agreements and restrictive covenants in employment contracts, post-employment contracts, or separation agreements that forbid post-employment competition of employees of a technology business or licensed physicians. (SD2)

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