
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
5 skilled workers from out of the State. Eliminating restrictive
6 covenants for employees of the technology business sector will
7 stimulate Hawaii's economy by preserving and providing jobs for
8 employees in this sector and by providing opportunities for
9 those employees to establish new companies and new job
10 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 as these highly specialized professionals are trained
14 to perform specific jobs in the industry. Because the
15 geographic area of Hawaii is unique and limited, noncompete
16 agreements unduly restrict future employment opportunities for
17 these workers and have a chilling effect on the creation of new
18 businesses within the State by innovative employees.



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

9 In *Technicolor, Inc v. Traeger*, 57 Haw. 113, 551 P. 2d 163
10 (1976), the Hawaii supreme court ruled that noncompete covenants
11 and agreements that are not per se violations under section 480-
12 4(b), Hawaii Revised Statutes, may be enforced in Hawaii as long
13 as they pass a reasonableness analysis. Employers' trade
14 secrets are already protected under the federal Uniform Trade
15 Secrets Act and under section 480-4(c)(4), Hawaii Revised
16 Statutes, therefore, the benefits to the employer of noncompete
17 or nonsolicit agreements are unnecessary and overreaching
18 protections that unreasonably impose undue hardship upon
19 employees of technology businesses and the Hawaii economy.

20 The purpose of this Act is to stimulate Hawaii's economy by
21 prohibiting noncompete agreements and restrictive covenants that

1 restrict beyond one year any post-employment competition for
2 employees of a technology business.

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

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

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

- 18 (1) Fix, control, or maintain, the price of any commodity;
- 19 (2) Limit, control, or discontinue, the production,
20 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;



- 1 (2) A covenant or agreement between partners not to
2 compete with the partnership within a reasonable area
3 and for a reasonable period of time upon the
4 withdrawal of a partner from the partnership;
- 5 (3) A covenant or agreement of the lessee to be restricted
6 in the use of the leased premises to certain business
7 or agricultural uses, or covenant or agreement of the
8 lessee to be restricted in the use of the leased
9 premises to certain business uses and of the lessor to
10 be restricted in the use of premises reasonably
11 proximate to any such leased premises to certain
12 business uses;
- 13 (4) A covenant or agreement by an employee or agent not to
14 use the trade secrets of the employer or principal in
15 competition with the employee's or agent's employer or
16 principal, during the term of the agency or
17 thereafter, or after the termination of employment,
18 within such time as may be reasonably necessary for
19 the protection of the employer or principal, without
20 imposing undue hardship on the employee or agent.



1 (d) Except as provided in subsection (c) (4), any
2 employment contract, post-employment contract, or separation
3 agreement containing a noncompete or nonsolicit clause relating
4 to an employee of a technology business with a duration beyond
5 one year is prohibited. Such agreement shall be void and of no
6 force and effect.

7 As used in this subsection:

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

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



1 "Nonsolicit clause" means a clause in an employment
2 contract, post-employment contract, or separation agreement that
3 prohibits an employee from soliciting employees of the employer
4 after leaving employment with the employer.

5 "Software development" means the creation of coded computer
6 instructions.

7 "Technology business" means a trade or business that
8 derives the majority of its revenue from software development,
9 information technology, or both. "Technology business" excludes
10 any trade or business that is considered by standard business
11 practice as part of the broadcast industry.

12 This subsection shall apply to all written, binding
13 noncompete and nonsolicit clauses entered into after June 30,
14 2015, and to all amendments adding or amending noncompete and
15 nonsolicit clauses in existing written agreements created prior
16 to July 1, 2015."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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

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Report Title:

Technology; Employment Covenants or Agreements

Description:

Prohibits noncompete agreements and restrictive covenants that restrict beyond one year post-employment competition of employees of a technology business. (SD1)

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