

JAN 21 2022

---

# 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, on July 9, 2021,  
2 the President of the United States issued an extensive Executive  
3 Order on Promoting Competition in the American Economy. Among  
4 other things, the executive order directs the Federal Trade  
5 Commission, through rulemaking, to ban or limit "non-compete  
6 agreements and other clauses and agreements that may unfairly  
7 limit worker mobility."

8       The legislature further finds that noncompete agreements  
9 make it harder for workers to bargain for higher wages and  
10 better work conditions. Although the intention of the executive  
11 order is to curtail the use of noncompete agreements,  
12 implementation of the order will probably be extremely time  
13 consuming and the order may also be vulnerable to legal  
14 challenge. Traditionally, noncompete agreements have been  
15 shaped and regulated by state law.

16       Accordingly, the purpose of this Act is to expressly  
17 prohibit noncompete agreements, with certain exceptions.



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

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

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

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

(2) Limit, control, or discontinue, the production, manufacture, or sale of any commodity for the purpose or with the result of fixing, controlling or maintaining its price;



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

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

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

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

18          (2) A covenant or agreement between partners not to  
19          compete with the partnership within a reasonable area  
20          and for a reasonable period of time upon the  
21          withdrawal of a partner from the partnership;



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

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

17          (d) Except as provided in subsection (c)(4), it shall be  
18 prohibited to include a noncompete clause or a nonsolicit clause  
19 in any employment contract relating to an employee of a  
20 technology business. The clause shall be void and of no force  
21 and effect.



1       (e) Except as provided in subsection (c) and consistent  
2 with the specific restrictions regarding a technology business  
3 in subsection (d), it shall be prohibited to include a  
4 noncompete clause in any employment contract. The clause shall  
5 be void and of no force and effect.

6       (f) As used in this [subsection:] section:

7       "Information technology development" means the design,  
8 integration, deployment, or support services for software.

9       "Noncompete clause" means a clause in an employment  
10 contract that prohibits an employee from working in a specific  
11 geographic area for a specific period of time after leaving  
12 employment with the employer.

13       "Nonsolicit clause" means a clause in an employment  
14 contract that prohibits an employee from soliciting employees of  
15 the employer after leaving employment with the employer.

16       "Software development" means the creation of coded computer  
17 instructions.

18       "Technology business" means a trade or business that  
19 derives the majority of its gross income from the sale or  
20 license of products or services resulting from its software  
21 development or information technology development, or both. A



1 "technology business" excludes any trade or business that is  
2 considered by standard practice as part of the broadcast  
3 industry or any telecommunications carrier, as defined in  
4 section 269-1, that holds a franchise or charter enacted or  
5 granted by the legislative or executive authority of the State  
6 or its predecessor governments."

7 SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY:

Lyn Delite  
By Request



# S.B. NO. 2611

**Report Title:**

Noncompete Agreements; Prohibition

**Description:**

Expressly prohibits noncompete agreements with certain exceptions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

