AN ACT CONCERNING NON-COMPETE AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective July 1, 2021) For purposes of sections 1 to 4, inclusive, of this act:

(1) "Base salary and benefits" means (A) wages, as defined in section 31-71a of the general statutes, earned over the course of the prior calendar year, without consideration of any overtime or bonus compensation, and (B) health insurance benefits and other fringe benefits received by an employee over the course of the prior calendar year;

(2) "Covenant not to compete" means a contract, provision or agreement entered into, amended, extended or renewed on or after July 1, 2021, that restrains a worker from, or imposes penalties on a worker for, engaging in any lawful profession, occupation, trade, calling or business of any kind in any geographic area of the state for any period of time after separation from employment, but does not mean (A) a nonsolicitation agreement, (B) a nondisclosure or confidentiality
agreement, or (C) a contract, provision or agreement in which an employee agrees not to reapply for employment with an employer after being terminated by such employer;

(3) "Covenant not to compete predicated on ownership interest" means a covenant not to compete made (A) in anticipation of a sale of the goodwill of a business or all of the seller's ownership interest in a business, or (B) as part of a partnership or ownership agreement and such contract or agreement expires and is not renewed, unless, prior to such expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions;

(4) "Employee" means any individual employed or permitted to work by an employer;

(5) "Employer" has the same meaning as provided in section 31-71a of the general statutes;

(6) "Exclusivity agreement" means a contract, provision or agreement entered into, amended, extended or renewed on or after July 1, 2021, that restrains a worker from, or imposes penalties on a worker for, having an additional job, supplementing their income by working for another employer, working as an independent contractor or being self-employed;

(7) "Exempt employee" means an employee not included in the definition of "employee" in section 31-58 of the general statutes;

(8) "Franchisee" has the same meaning as provided in section 42-133e of the general statutes;

(9) "Franchisor" has the same meaning as provided in section 42-133e of the general statutes;

(10) "Legitimate business interest" means an interest in the protection of trade secrets, or confidential information that does not qualify as a trade secret, or an interest in preventing solicitation of the employer's customers;
(11) "Monetary compensation" means (A) wages, as defined in section 46-31-71a of the general statutes, earned over the course of the prior year, or portion thereof for which the employee was employed, annualized based on the period of employment and calculated as of the earlier of the date enforcement of the covenant not to compete is sought or the date of separation from employment, and (B) payments made to independent contractors based on services rendered, annualized based on the period during which the independent contractor provided services and calculated as of the earlier of the date enforcement of the covenant not to compete is sought or the date of separation from employment;

(12) "Nonsolicitation agreement" means (A) a contract, provision or agreement between an employer and employee that prohibits solicitation by an employee, upon termination of employment of (i) any employee of the employer to leave the employer, or (ii) of any customer of the employer, to cease or reduce the extent to which it is doing business with the employer, or (B) a contract, provision or agreement between an employer and any customer thereof that prohibits solicitation by the customer of an employee of the employer to cease or reduce the extent to which it is doing business with the employer;

(13) "Separation agreement" means an agreement accompanying the termination or separation of employment without cause in which the employee releases claims or potential claims against the employer;

(14) "Separation from employment" means any event at which an employment or independent contractor relationship ends; and

(15) "Worker" means an employee or an independent contractor.

Sec. 2. (NEW) (Effective July 1, 2021) (a) No employer or contractor may request or require a worker to sign or agree to a covenant not to compete, and any such covenant not to compete shall not be enforceable against such worker, unless all of the following conditions are met: (1) Such covenant does not restrict the worker's competitive activities for a period of more than one year following the termination or separation of
the employee; (2) such covenant is necessary to protect a legitimate business interest of the employer, and such business interest could not reasonably be protected via less restrictive means, including, but not limited to, a nondisclosure agreement, nonsolicitation agreement, or reliance on the protections provided by the provisions of chapter 625 of the general statutes; (3) such covenant is no more restrictive than necessary to protect such business interest in terms of the covenant's duration, geographic scope, type of work and type of employer; (4) such worker is an exempt employee earning monetary compensation of more than three times the minimum fair wage as defined in section 31-58 of the general statutes, or such worker is an independent contractor earning monetary compensation of more than five times said minimum fair wage; and (5) the written text of such covenant is provided to the worker no later than ten business days prior to the earlier of (A) the deadline for acceptance of the offer of employment or the offer to enter into an independent contractor relationship, or (B) the date of signing of such covenant; (6) such covenant expressly states that the worker has the right to consult with counsel prior to signing; (7) such covenant is signed by the worker and the employer or contractor separately from any other agreement underlying the relationship; (8) if such covenant is added to an existing employment or independent contractor relationship, it is supported by sufficient consideration independent from continuation of the employment or contractor relationship; (9) such covenant does not require the worker to submit to adjudication in a forum outside of Connecticut, or otherwise purport to deprive the worker of the protections or benefits of this section; and (10) such covenant does not unreasonably interfere with the public's interests and is consistent with this section, other laws of this state and public policy.

(b) Even if otherwise valid under this section, a covenant not to compete that applies to geographic areas in which an employee neither provided services nor had a material presence or influence within the last two years of employment, or that applies to types of work that the employee did not perform during the last two years of employment, shall be presumed entirely unenforceable.
(c) Notwithstanding the provisions of subdivision (1) of subsection (a) of this section, a covenant not to compete shall be permitted and enforceable for a period no longer than two years following separation from employment if such covenant is a part of an agreement under which the worker is compensated with the worker's base salary and benefits, minus any outside compensation, for the entire period of such covenant.

(d) Notwithstanding the provisions of subsection (a) of this section, a covenant not to compete predicated on ownership interest shall be permitted and enforceable unless (1) the employment or contractual relationship is terminated by the employer or contractor; or (2) the employment or contractual relationship is terminated by the worker for good cause attributable to the employer or contractor.

(e) This section shall not apply to any covenant not to compete as defined in section 20-14p, 20-681, or 31-50b of the general statutes.

Sec. 3. (NEW) (Effective July 1, 2021) (a) No employer or contractor may request or require a worker to sign or agree to an exclusivity agreement unless the worker is an exempt employee earning monetary compensation of more than three times the minimum fair wage as defined in section 31-58 of the general statutes, or the worker is an independent contractor earning monetary compensation of more than five times said minimum fair wage.

(b) This section shall not apply when the worker's having an additional job, supplementing their income by working for another employer, working as an independent contractor, or being self-employed would: (1) Imperil the safety of the worker, the worker's coworkers or the public; or (2) substantially interfere with the reasonable and normal scheduling expectations of the employer or contractor.

(c) This section shall not be construed to alter any obligations of an employee to an employer under existing law, including, but not limited to, the common law duty of loyalty and laws preventing conflicts of
interest and any corresponding policies addressing such obligations.

Sec. 4. (NEW) (Effective July 1, 2021) (a) The party seeking to enforce a covenant not to compete or an exclusivity agreement against a worker shall have the burden of proof in any enforcement proceeding. The party required to continue to compensate an employee or independent contractor in an agreement under subsection (c) of section 2 of this act shall have the burden of proof in any proceeding to enforce such requirement to continue to compensate such employee or independent contractor.

(b) The provisions of any contract or agreement constituting a covenant not to compete or exclusivity agreement may be held partially enforceable only to the extent that such provisions constitute a combination of several distinct covenants. A covenant intended by the parties to be an entirety may only be held fully enforceable or unenforceable.

(c) Any severable provisions of any contract or agreement that includes a covenant not to compete or an exclusivity agreement that is held unenforceable under the provisions of sections 1 to 3, inclusive, of this act shall remain in full force and effect, including, but not limited to, any provisions that require the payment of damages resulting from any injury suffered by reason of termination or separation of employment.

(d) The Attorney General, on behalf of a worker or workers, or any worker aggrieved by a violation of this section may bring a civil action in the Superior Court for any and all relief provided in this section. In such actions, the plaintiff shall carry the burden of proof by a preponderance of the evidence.

(e) If a court or arbitrator determines that a covenant not to compete or an exclusivity agreement violates this section, the violator is liable for the greater of the aggrieved worker's actual damages or a statutory penalty of five thousand dollars, in addition to reasonable attorney's fees, expenses and court costs.
(f) Notwithstanding section 31-69a of the general statutes, no employer, officer, agent or other person who violates any provision of this section shall be liable to the Labor Department for a civil penalty.

Sec. 5. Section 31-50a of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2021):

(a) No employer may require any person employed in the classification 339032 of the standard occupational classification system of the Bureau of Labor Statistics of the United States Department of Labor to enter into an agreement prohibiting such person from engaging in the same or a similar job, at the same location at which the employer employs such person, for another employer or as a self-employed person, unless the employer proves that such person has obtained trade secrets, as defined in subsection (d) of section 35-51, of the employer.

(b) (1) Any person who is aggrieved by a violation of this section may bring a civil action in the Superior Court to recover damages and for such injunctive and equitable relief as the court deems appropriate.

(2) The Labor Commissioner may request the Attorney General to bring an action in the superior court for the judicial district of Hartford for restitution on behalf of any person injured by any violation of this section and for such injunctive or equitable relief as the court deems appropriate.

(c) The provisions of this section shall apply to agreements entered into, renewed or extended on or after October 1, 2007, and before July 1, 2021.

This act shall take effect as follows and shall amend the following sections:

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<tr>
<th>Section 1</th>
<th>July 1, 2021</th>
<th>New section</th>
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<tbody>
<tr>
<td>Sec. 2</td>
<td>July 1, 2021</td>
<td>New section</td>
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<tr>
<td>Sec. 3</td>
<td>July 1, 2021</td>
<td>New section</td>
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<td>Sec. 4</td>
<td>July 1, 2021</td>
<td>New section</td>
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<tr>
<td>Sec. 5</td>
<td>July 1, 2021</td>
<td>31-50a</td>
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Statement of Purpose:
To set certain requirements for covenants not to compete.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]