



# House of Representatives

General Assembly

**File No. 128**

February Session, 2022

House Bill No. 5249

*House of Representatives, March 28, 2022*

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING NONCOMPETE AGREEMENTS.**

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

1 Section 1. (NEW) (*Effective July 1, 2022*) As used in this section and  
2 sections 2 to 4, inclusive, of this act:

3 (1) "Base salary and benefits" means (A) wages, as defined in section  
4 31-71a of the general statutes, earned over the course of the prior  
5 calendar year, without consideration of any overtime or bonus  
6 compensation, and (B) health insurance benefits and other fringe  
7 benefits received by an employee over the course of the prior calendar  
8 year;

9 (2) "Covenant not to compete" means a contract, provision or  
10 agreement entered into, amended, extended or renewed on or after July  
11 1, 2022, that restrains a worker from, or imposes penalties on a worker  
12 for, engaging in any lawful profession, occupation, trade, calling or  
13 business of any kind in any geographic area of the state for any period  
14 of time after separation from employment, but does not mean (A) a

15 nonsolicitation agreement, provided such agreement (i) does not restrict  
16 a worker's activities for more than one year, and (ii) is no more  
17 restrictive than necessary in duration, geographic scope, type of work  
18 and type of employer, (B) a nondisclosure or confidentiality agreement,  
19 (C) a contract, provision or agreement in which an employee agrees not  
20 to reapply for employment with an employer after being terminated by  
21 such employer, (D) any covenant not to compete, as defined in section  
22 20-14p or 20-681 of the general statutes or as described in section 31-50b  
23 of the general statutes, or (E) any contract, provision or agreement made  
24 (i) in anticipation of a sale of the goodwill of a business or all of the  
25 seller's ownership interest in a business, or (ii) as part of a partnership  
26 or ownership agreement;

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

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

31 (5) "Exclusivity agreement" means a contract, provision or agreement  
32 entered into, amended, extended or renewed on or after July 1, 2022,  
33 that restrains a worker from, or imposes penalties on a worker for,  
34 having an additional job, supplementing the worker's income by  
35 working for another employer, working as an independent contractor  
36 or being self-employed;

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

39 (7) "Legitimate business interest" means an interest in the protection  
40 of trade secrets or confidential information that does not qualify as a  
41 trade secret, or an interest in preserving established goodwill with the  
42 employer's customers;

43 (8) "Monetary compensation" means (A) wages, as defined in section  
44 31-71a of the general statutes, earned over the course of the prior  
45 calendar year or portion thereof, for which the employee was employed,

46 annualized based on the period of employment and calculated as of the  
47 earlier of the date enforcement of the covenant not to compete is sought  
48 or the date of separation from employment, and (B) payments made to  
49 independent contractors based on services rendered, annualized based  
50 on the period during which the independent contractor provided  
51 services and calculated as of the earlier of the date enforcement of the  
52 covenant not to compete is sought or the date of separation from  
53 employment;

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

63 (10) "Separation from employment" means any event in which an  
64 employment or independent contractor relationship ends; and

65 (11) "Worker" means an employee or an independent contractor.

66 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) No employer or contractor  
67 may request or require a worker to sign or agree to a covenant not to  
68 compete and any such covenant not to compete shall not be enforceable  
69 against such worker unless all of the following conditions are met:

70 (1) Such covenant restricts the worker's competitive activities for a  
71 period of not more than one year following the termination or  
72 separation of the worker;

73 (2) Such covenant is necessary to protect a legitimate business interest  
74 of the employer and such business interest could not reasonably be  
75 protected by less restrictive means, including, but not limited to, a  
76 nondisclosure agreement, nonsolicitation agreement or reliance on the

77 protections provided by the provisions of chapter 625 of the general  
78 statutes;

79 (3) Such covenant is no more restrictive than necessary to protect such  
80 business interest in terms of the covenant's duration, geographic scope,  
81 type of work and type of employer;

82 (4) Such worker is an exempt employee;

83 (5) The written text of such covenant is provided to the worker not  
84 later than ten business days prior to (A) the worker's deadline to accept  
85 an offer from the employer or the contractor for employment or to enter  
86 into an independent contractor relationship, or (B) the date such  
87 covenant is signed, whichever is earlier;

88 (6) Such covenant contains a statement of the worker's rights  
89 regarding covenants not to compete. Such statement shall include the  
90 following: (A) Not all covenants not to compete are enforceable; (B)  
91 covenants not to compete for workers earning less than the amount  
92 provided in subsection (b) of this section are illegal; (C) the worker may  
93 contact the Attorney General if the worker is subject to an illegal  
94 covenant not to compete; and (D) the worker has the right to consult  
95 with counsel prior to signing the covenant not to compete;

96 (7) Such covenant is signed by the worker and the employer or  
97 contractor separately from any other agreement underlying the  
98 relationship between the worker and the employer or contractor;

99 (8) If such covenant is added to an existing employment or  
100 independent contractor relationship, it is supported by sufficient  
101 consideration independent from continuation of the employment or  
102 contractor relationship;

103 (9) The employment or contractual relationship was not terminated  
104 by the worker for good cause attributable to the employer or contractor;

105 (10) Such covenant does not require the worker to submit to  
106 adjudication in a forum outside of this state or otherwise purport to

107 deprive the worker of the protections or benefits of this section; and

108 (11) Such covenant does not unreasonably interfere with the public's  
109 interests and is consistent with the provisions of this section, other laws  
110 of this state and public policy.

111 (b) No employer or contractor may request or require a worker to  
112 sign or agree to a covenant not to compete, and any such covenant not  
113 to compete shall be unenforceable against such worker, (1) if such  
114 worker is an employee earning monetary compensation of less than  
115 three times the minimum fair wage, as defined in section 31-58 of the  
116 general statutes, or (2) such worker is an independent contractor earning  
117 monetary compensation of less than five times such minimum fair  
118 wage.

119 (c) A covenant not to compete that applies to geographic areas in  
120 which a worker neither provided services nor had a material presence  
121 or influence within the last two years of employment, or that applies to  
122 types of work that the worker did not perform during the last two years  
123 of employment, shall be presumed entirely unenforceable.

124 (d) Notwithstanding the provision of subdivision (1) of subsection (a)  
125 of this section, a covenant not to compete shall be permitted and  
126 enforceable for a period of not longer than two years following  
127 separation from employment if such covenant is a part of an agreement  
128 under which the worker is compensated with the worker's base salary  
129 and benefits, minus any outside compensation, for the entire period of  
130 such covenant.

131 Sec. 3. (NEW) (*Effective July 1, 2022*) (a) No employer or contractor  
132 may request or require a worker to sign or agree to an exclusivity  
133 agreement, unless (1) the worker is an exempt employee earning  
134 monetary compensation of more than three times the minimum fair  
135 wage, as defined in section 31-58 of the general statutes, or (2) the  
136 worker is an independent contractor earning monetary compensation of  
137 more than five times said minimum fair wage.

138 (b) An exclusivity agreement may be permitted if a worker having an  
139 additional job, supplementing the worker's income by working for  
140 another employer, working as an independent contractor or being self-  
141 employed would: (1) Imperil the safety of the worker, the worker's  
142 coworkers or the public; or (2) substantially interfere with the  
143 reasonable and normal scheduling expectations of the worker, provided  
144 on-call shift scheduling shall not be considered a reasonable scheduling  
145 expectation for the purposes of this subsection.

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

151 Sec. 4. (NEW) (*Effective July 1, 2022*) (a) The party seeking to enforce  
152 a covenant not to compete or an exclusivity agreement against a worker  
153 shall have the burden of proof in any enforcement proceeding. The  
154 party required to continue to compensate a worker in an agreement  
155 under subsection (d) of section 2 of this act shall have the burden of  
156 proof in any proceeding to enforce such requirement to continue to  
157 compensate such worker.

158 (b) No court shall judicially modify a covenant not to compete that  
159 violates the provisions of sections 1 to 3, inclusive, of this act, in order  
160 to partially enforce such covenant.

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

168 (d) The Attorney General, on behalf of a worker or workers, or any  
169 worker aggrieved by a violation of any provision of sections 1 to 3,

170 inclusive, of this act, may bring a civil action in the Superior Court for  
171 any and all relief provided in this section.

172 (e) If a court or an arbitrator determines that a covenant not to  
173 compete or an exclusivity agreement violates any provision of sections  
174 1 to 3, inclusive, of this act, the violator shall be liable for the greater of  
175 (1) the aggrieved worker's actual damages, or (2) a penalty of five  
176 thousand dollars, in addition to reasonable attorney's fees, expenses and  
177 court costs.

178 (f) Notwithstanding section 31-69a of the general statutes, no  
179 employer, officer, agent or other person who violates any provision of  
180 this section shall be liable to the Labor Department for a civil penalty.

181 Sec. 5. Section 31-50a of the general statutes is repealed and the  
182 following is substituted in lieu thereof (*Effective July 1, 2022*):

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

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

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

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

201 2022.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2022</i>	New section
Sec. 2	<i>July 1, 2022</i>	New section
Sec. 3	<i>July 1, 2022</i>	New section
Sec. 4	<i>July 1, 2022</i>	New section
Sec. 5	<i>July 1, 2022</i>	31-50a

**LAB**      *Joint Favorable*



The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Resources of the General Fund	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which sets limits on the use of covenant not to compete provisions in employment contracts, results in a potential minimal revenue gain to the extent there are violations and a court imposes penalties.<sup>1</sup>

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any cost impact. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to require additional resources.

The bill has no cost impact to the state or municipalities as employers. To the extent that either the state or municipalities enter into non-compete contracts with their employees, the bill is not anticipated to change the cost of any such contract.

**The Out Years**

<sup>1</sup> Under the bill a violator is liable for the greater of the aggrieved worker's actual damages or a \$5,000 statutory penalty, in addition to reasonable attorney's fees, expenses, and court costs.

The annualized ongoing fiscal impact identified above would continue into the future.

**OLR Bill Analysis****HB 5249*****AN ACT CONCERNING NONCOMPETE AGREEMENTS.*****SUMMARY**

This bill sets limits on the use of covenant not to compete provisions in employment contracts. Under the bill, a “covenant not to compete” (i.e., noncompete agreement) means a contract, provision, or agreement that restrains a worker (employee or independent contractor) from, or imposes penalties for, engaging in any kind of profession, occupation, trade, or business in any geographic area for a set period after separation from employment. The bill excludes from this definition (1) nonsolicitation agreements that meet certain standards, (2) nondisclosure or confidentiality agreements, (3) agreements not to reapply with the same employer after being terminated, and (4) any contract or agreement 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.

Under the bill, a noncompete agreement is enforceable only if specific requirements are met, including that the employee must earn at least three times the minimum wage.

The bill also sets limits on exclusivity agreements, which it defines as an agreement that imposes penalties on a worker for, or restrains a worker from, supplementing his or her income by working for another employer, working as an independent contractor, or being self-employed.

The bill applies to noncompete clauses and exclusivity agreements entered into, amended, extended, or renewed on or after July 1, 2022.

The bill’s provisions do not apply to noncompete clauses that existing

law (1) limits in employment agreements for physicians or (2) prohibits in employment agreements for broadcast employees and homemaker, companion, and home health services. It also sunsets, on June 30, 2022, a law that prohibits certain existing noncompete agreements for security guards (therefore subjecting security guards to the bill's general provisions on noncompete agreements).

The bill applies to private employers as well as the state or municipal employers.

EFFECTIVE DATE: July 1, 2022

### **§§ 1, 2 & 5 — NONCOMPETE AGREEMENTS**

The bill prohibits employers and contractors from requesting or requiring a worker to sign or agree to a noncompete agreement and makes any such agreement unenforceable unless several conditions are met. A noncompete agreement is unenforceable if the worker terminated the employment or contractual relationship for good cause attributable to the employer or contractor.

To be enforceable, among other things, a noncompete agreement must:

1. only be applied to (a) exempt employees earning monetary compensation at least three times the state minimum wage or (b) workers who are independent contractors earning monetary compensation at least five times the state minimum fair wage;
2. be limited to a period of no more than one year after the employee's termination or separation (see below for an exception to this condition);
3. be necessary to protect the employer's legitimate business interest that could not reasonably be protected through less restrictive means, including a nondisclosure agreement, nonsolicitation agreement, or the business protections under the state Uniform Trade Secrets Act;

4. be no more restrictive than necessary to protect the business interest in terms of the agreement's duration, geographic scope, type of work, and type of employer;
5. not require the worker to submit to adjudication outside of the state, or otherwise purport to deprive the worker of the bill's protections or benefits; and
6. not unreasonably interfere with the public's interests and be consistent with the bill's requirements, other state laws, and public policy.

Under the bill, "monetary compensation" for exempt employees means wages earned over the course of the prior calendar year, or portion of that year, for which the employee was employed, annualized based on the employment period and calculated as of the earlier of the (1) date enforcement of the noncompete agreement is sought or (2) date of separation from employment. For independent contractors, "monetary compensation" means payments for services rendered, annualized based on the period during which the contractor provided services and calculated as of the earlier of the (1) date enforcement is sought or (2) date of separation from employment.

***Requirements Related to Signing the Agreement (§ 2(a))***

To be enforceable, the noncomplete agreement must also:

1. be provided to the worker in writing no later than 10 business days before the earlier of (a) the deadline for accepting the offer of employment or the offer to enter into an independent contractor relationship or (b) the date the agreement is signed;
2. contain a statement of the worker's noncompete agreement rights (see below);
3. be signed by the worker and the employer or contractor separately from any other agreement underlying the relationship; and

4. be supported by sufficient consideration independent from continuation of the employment or contractor relationship, if the agreement is added to an existing employment or independent contractor relationship.

### ***Statement of Worker's Rights (§ 2(a))***

The bill requires any noncompete agreement to include a statement of the worker's rights that gives the following information:

1. not all noncompete agreements are enforceable,
2. noncompete agreements for employees and independent contractors earning less than the minimum stated in the bill are illegal,
3. the worker can contact the attorney general if the worker is subject to an illegal noncompete agreement, and
4. the worker has the right to consult legal counsel before signing the noncompete agreement.

### ***Other General Requirements (§ 2(c))***

Under the bill, even if all the above conditions are met, a noncompete agreement is presumed unenforceable if it applies to (1) geographic areas in which the worker neither provided services nor had a material presence or influence within the last two years of employment or (2) types of work that the worker did not perform during the last two years of employment.

### ***Exception to the Duration Limit (§ 2(d))***

The bill allows a noncompete agreement to be enforceable for up to two years if the worker is paid his or her base salary and benefits, minus any outside compensation, for the entire period of the noncompete agreement.

### ***Nonsolicitation Agreements (§ 1)***

The bill specifies that nonsolicitation agreements are excluded from

the definition of noncompete agreements only if they do not restrict a worker for more than a year and are not more restrictive than necessary in the agreement's duration, geographic reach, type of work, and type of employer.

Under the bill a "nonsolicitation agreement" means a contract or agreement between:

1. an employer and employee that prohibits solicitation by an employee, upon termination of employment, of (a) any employee of the employer to leave or (b) any customer to cease or reduce doing business with the employer or
2. an employer and any customer that prohibits solicitation by the customer of an employee of the employer to cease or reduce doing business with the employer.

### **Existing Noncompete Laws (§§ 1 & 5)**

The bill leaves noncompete laws in effect for three types of professions: (1) physicians, (2) broadcast employees, and (3) homemakers, companions, or home health aides. It creates an end date for security guards, therefore sunsetting existing limitations on the use of noncompete clauses in security guard employment agreements and subjecting them to the bill's general provisions. (In practice, most security guards earn less than the wage threshold that must be exceeded in order to have a noncompete agreement.)

### **§ 3 — EXCLUSIVITY AGREEMENTS**

The bill allows exclusivity agreements under certain conditions. An employer or contractor may request or require a worker to sign or agree to an exclusivity agreement only if the worker is an exempt employee earning more than three times the state's minimum fair wage or is an independent contractor earning more than five times the state's minimum fair wage.

The bill allows exclusivity agreements when the worker supplementing his or her 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 worker's reasonable and normal scheduling expectations, which excludes on-call shift scheduling.

The bill specifies that the exclusivity agreement provisions cannot be construed to alter an employee's obligations to an employer under existing law, including the common law duty of loyalty and laws preventing conflicts of interest and any corresponding policies related to the obligations.

#### **§ 4 — ENFORCEMENT**

Under the bill, the attorney general, on behalf of a worker or workers, or any worker aggrieved by an alleged violation of the bill can bring a lawsuit in Superior Court for any and all relief the bill provides.

If a court or arbitrator determines that a noncompete agreement or an exclusivity agreement violates the bill, the violator is liable for the greater of the aggrieved worker's actual damages or a \$5,000 statutory penalty, in addition to reasonable attorney's fees, expenses, and court costs. Violators under the bill are not liable to the Labor Department for a civil penalty.

In a proceeding to enforce an agreement, the bill puts the burden of proof on the party seeking to enforce a noncompete agreement or an exclusivity agreement against a worker.

The bill prohibits the court from modifying a noncompete agreement to make it partially enforceable if the agreement violates the provisions of the bill.

#### **§ 4 — SEVERABILITY**

Since noncompete agreements may be part of a larger employment contract that also addresses other issues, such as compensation, the bill includes provisions on severability. It specifies that a noncompete found to be unenforceable does not invalidate other parts of the contract. This



includes any provisions that require the payment of damages resulting from any injury suffered by reason of termination or separation of employment.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 10 Nay 3 (03/10/2022)