AN ACT CONCERNING NONCOMPETE AGREEMENTS.

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

Section 1. (NEW) (Effective July 1, 2022) As used in this section and sections 2 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, 2022, 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, provided such agreement (i) does not restrict
a worker's activities for more than one year, and (ii) is no more restrictive than necessary in duration, geographic scope, type of work and type of employer, (B) a nondisclosure or confidentiality agreement, (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, (D) any covenant not to compete, as defined in section 20-14p or 20-681 of the general statutes or as described in section 31-50b of the general statutes, or (E) any contract, provision or agreement made (i) in anticipation of a sale of the goodwill of a business or all of the seller's ownership interest in a business, or (ii) as part of a partnership or ownership agreement;

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

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

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

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

(7) "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 preserving established goodwill with the employer's customers;

(8) "Monetary compensation" means (A) wages, as defined in section 31-71a of the general statutes, earned over the course of the prior calendar 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;

(9) "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) 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;

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

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

Sec. 2. (NEW) (Effective July 1, 2022) (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 restricts the worker's competitive activities for a period of not more than one year following the termination or separation of the worker;

(2) Such covenant is necessary to protect a legitimate business interest of the employer and such business interest could not reasonably be protected by 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
(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;

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

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

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

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

(10) Such covenant does not require the worker to submit to adjudication in a forum outside of this state or otherwise purport to deprive the worker of the protections or benefits of this section; and
(11) Such covenant does not unreasonably interfere with the public's interests and is consistent with the provisions of this section, other laws of this state and public policy.

(b) 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 be unenforceable against such worker, (1) if such worker is an employee earning monetary compensation of less than three times the minimum fair wage, as defined in section 31-58 of the general statutes, or (2) such worker is an independent contractor earning monetary compensation of less than five times such minimum fair wage.

(c) A covenant not to compete that applies to geographic areas in which a worker 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 worker did not perform during the last two years of employment, shall be presumed entirely unenforceable.

(d) Notwithstanding the provision of subdivision (1) of subsection (a) of this section, a covenant not to compete shall be permitted and enforceable for a period of not 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.

Sec. 3. (NEW) (Effective July 1, 2022) (a) No employer or contractor may request or require a worker to sign or agree to an exclusivity agreement, unless (1) 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 (2) the worker is an independent contractor earning monetary compensation of more than five times said minimum fair wage.

(b) An exclusivity agreement may be permitted if a worker having an additional job, supplementing the worker's 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 worker, provided on-call shift scheduling shall not be considered a reasonable scheduling expectation for the purposes of this subsection.

(c) The provisions of 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, 2022) (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 a worker in an agreement under subsection (d) of section 2 of this act shall have the burden of proof in any proceeding to enforce such requirement to continue to compensate such worker.

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

(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 any provision of sections 1 to 3, inclusive, of this act, may bring a civil action in the Superior Court for any and all relief provided in this section.
(e) If a court or an arbitrator determines that a covenant not to compete or an exclusivity agreement violates any provision of sections 1 to 3, inclusive, of this act, the violator shall be liable for the greater of (1) the aggrieved worker's actual damages, or (2) a 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, 2022):

(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, 2022.
This act shall take effect as follows and shall amend the following sections:

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<tr>
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<tr>
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<td>Sec. 5</td>
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**Statement of Purpose:**
To set certain requirements for covenants not to compete and exclusivity agreements.

[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.]