



GOV. MSG. NO. 1259

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 26, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 26, 2015, the following bill was signed into law:

HB1090 HD2 SD2 CD1

RELATING TO EMPLOYMENT AGREEMENTS
ACT 158 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

JUN 26 2015

ORIGINAL

ACT 158

H.B. NO.

1090
H.D. 2
S.D. 2
C.D. 1

on
HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

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 restrictive
2 employment covenants impede the development of technology
3 businesses within the State by driving skilled workers to other
4 jurisdictions and by requiring local technology businesses to
5 solicit skilled workers from out of the State. Eliminating
6 restrictive covenants for employees of technology businesses
7 will stimulate Hawaii's economy by preserving and providing jobs
8 for employees in this sector and by providing opportunities for
9 those technology employees to establish new technology companies
10 and new job 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 technology workers and have a chilling effect on the creation of



1 new technology businesses within the State by innovative
2 employees.

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

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



1 hardship upon employees of technology businesses and the Hawaii
2 economy.

3 The purpose of this Act is to stimulate Hawaii's economy by
4 prohibiting noncompete agreements and restrictive covenants that
5 forbid post-employment competition for employees of technology
6 businesses.

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

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

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



- 1 (1) Fix, control, or maintain[7] the price of any
2 commodity;
- 3 (2) Limit, control, or discontinue, the production,
4 manufacture, or sale of any commodity for the purpose
5 or with the result of fixing, controlling or
6 maintaining its price;
- 7 (3) Fix, control, or maintain, any standard of quality of
8 any commodity for the purpose or with the result of
9 fixing, controlling, or maintaining its price;
- 10 (4) Refuse to deal with any other person or persons for
11 the purpose of effecting any of the acts described in
12 paragraphs (1) to (3) [~~of this subsection~~].
- 13 (c) Notwithstanding [~~the foregoing~~] subsection (b) and
14 without limiting the application of [~~the foregoing~~] subsection
15 (a), it shall be lawful for a person to enter into any of the
16 following restrictive covenants or agreements ancillary to a
17 legitimate purpose not violative of this chapter, unless the
18 effect thereof may be substantially to lessen competition or to
19 tend to create a monopoly in any line of commerce in any section
20 of the State:



- 1 (1) A covenant or agreement by the transferor of a
2 business not to compete within a reasonable area and
3 within a reasonable period of time in connection with
4 the sale of the business;
- 5 (2) A covenant or agreement between partners not to
6 compete with the partnership within a reasonable area
7 and for a reasonable period of time upon the
8 withdrawal of a partner from the partnership;
- 9 (3) A covenant or agreement of the lessee to be restricted
10 in the use of the leased premises to certain business
11 or agricultural uses, or covenant or agreement of the
12 lessee to be restricted in the use of the leased
13 premises to certain business uses and of the lessor to
14 be restricted in the use of premises reasonably
15 proximate to any such leased premises to certain
16 business uses;
- 17 (4) A covenant or agreement by an employee or agent not to
18 use the trade secrets of the employer or principal in
19 competition with the employee's or agent's employer or
20 principal, during the term of the agency or
21 thereafter, or after the termination of employment,



1 within such time as may be reasonably necessary for
2 the protection of the employer or principal, without
3 imposing undue hardship on the employee or agent.

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

9 As used in this subsection:

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

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

16 "Nonsolicit clause" means a clause in an employment
17 contract that prohibits an employee from soliciting employees of
18 the employer after leaving employment with the employer.

19 "Software development" means the creation of coded computer
20 instructions.



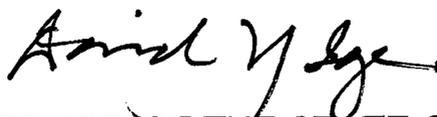
1 "Technology business" means a trade or business that
2 derives the majority of its gross income from the sale or
3 license of products or services resulting from its software
4 development or information technology development, or both. A
5 "technology business" excludes any trade or business that is
6 considered by standard practice as part of the broadcast
7 industry or any telecommunications carrier, as defined in
8 section 269-1, that holds a franchise or charter enacted or
9 granted by the legislative or executive authority of the State
10 or its predecessor governments."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 5. This Act shall take effect on July 1, 2015.

APPROVED this 26 day of JUN , 2015



GOVERNOR OF THE STATE OF HAWAII

