A BILL FOR AN ACT

RELATING TO FAIR EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the use of noncompete agreements restricting employees from post-employment work in a specific geographical area for a specific period of time is becoming more common. Approximately one-fifth of United States workers, or thirty million individuals, are covered by a noncompete agreement. Federal and state lawmakers, state attorneys general, and the Obama administration have expressed concern about the negative effects of unfair noncompete agreements and the spread of noncompete agreements to low-income workers in businesses like hair salons, warehouse shipping, and fast food restaurants. Where the employee is unlikely to have obtained trade secrets or advanced skills training, a noncompete agreement designed to protect the employer's intellectual property is unnecessarily punitive. Noncompete agreements can reduce job mobility, stifle innovation, and even lead to unemployment if a worker is unable to find a new job that does not violate a former employer's noncompete agreement.
The legislature further finds that policymakers are exploring ways to address unreasonable noncompete agreements. At least two states, Illinois and Oregon, have recently enacted laws to prohibit noncompete agreements for certain low wage workers, and three other states are currently considering similar legislation. In a few other states, such as California, North Dakota, and Oklahoma, noncompete agreements are generally unenforceable.

The purpose of this Act is to prohibit noncompete agreements for low wage workers.

SECTION 2. Section 480-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Except as provided in subsection (c)(4), it shall be prohibited to include a noncompete clause or a nonsolicit clause in any employment contract relating to:

(1) An employee of a technology business; or

(2) An employee whose earnings do not exceed the greater of the hourly rate equal to the minimum wage required by applicable federal or state law or $15 per hour.

The clause shall be void and of no force and effect.

As used in this subsection:
"Information technology development" means the design, integration, deployment, or support services for software.

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

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

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

"Technology business" means a trade or business that derives the majority of its gross income from the sale or license of products or services resulting from its software development or information technology development, or both. A "technology business" excludes any trade or business that is considered by standard practice as part of the broadcast industry or any telecommunications carrier, as defined in section 269-1, that holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments."
SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY:  

JAN 23 2019
Report Title:
Noncompete Agreements; Low Wage Workers

Description:
Prohibits noncompete agreements for low wage workers whose earnings do not exceed the greater of the hourly rate equal to the minimum wage required by applicable federal or state law or $15 per hour.

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