

---

---

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

10           A restrictive covenant not to compete with a former  
11 employer imposes a special hardship on employees of technology  
12 businesses as these highly specialized professionals are trained  
13 to perform specific jobs in the industry. Because the  
14 geographic area of Hawaii is unique and limited, noncompete  
15 agreements unduly restrict future employment opportunities for  
16 these workers and have a chilling effect on the creation of new  
17 businesses within the State by innovative employees.



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

9 In *Technicolor, Inc v. Traeger*, 57 Haw. 113, 551 P. 2d 163  
10 (1976), the Hawaii supreme court ruled that noncompete covenants  
11 and agreements that are not per se violations under section  
12 480-4(b), Hawaii Revised Statutes, may be enforced in Hawaii as  
13 long as they pass a reasonableness analysis. Employers' trade  
14 secrets are already protected under the federal Uniform Trade  
15 Secrets Act and under section 480-4(c)(4), Hawaii Revised  
16 Statutes, therefore, the benefits to the employer of noncompete  
17 or nonsolicit agreements are unnecessary and overreaching  
18 protections that unreasonably impose undue hardship upon  
19 employees of technology businesses and the Hawaii economy.

20 The purpose of this Act is to stimulate Hawaii's economy by  
21 prohibiting noncompete agreements and restrictive covenants that



1 forbid post-employment competition for employees of a technology  
2 business.

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

5 **"§480-4 Combinations in restraint of trade, price-fixing**  
6 **and limitation of production prohibited.** (a) Every contract,  
7 combination in the form of trust or otherwise, or conspiracy, in  
8 restraint of trade or commerce in the State, or in any section  
9 of this State is illegal.

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

- 18 (1) Fix, control, or maintain, the price of any commodity;  
19 (2) Limit, control, or discontinue, the production,  
20 manufacture, or sale of any commodity for the purpose



1 or with the result of fixing, controlling or  
2 maintaining its price;

3 (3) Fix, control, or maintain, any standard of quality of  
4 any commodity for the purpose or with the result of  
5 fixing, controlling, or maintaining its price;

6 (4) Refuse to deal with any other person or persons for  
7 the purpose of effecting any of the acts described in  
8 paragraphs (1) to (3) [~~of this subsection~~].

9 (c) Notwithstanding [~~the foregoing~~] subsection (b) and  
10 without limiting the application of [~~the foregoing~~] subsection  
11 (a), it shall be lawful for a person to enter into any of the  
12 following restrictive covenants or agreements ancillary to a  
13 legitimate purpose not [~~violate~~] in violation of this chapter,  
14 unless the effect [~~thereof~~] may be to substantially [~~to~~] lessen  
15 competition or to tend to create a monopoly in any line of  
16 commerce in any section of the State:

17 (1) A covenant or agreement by the transferor of a  
18 business not to compete within a reasonable area and  
19 within a reasonable period of time in connection with  
20 the sale of the business;



- 1           (2) A covenant or agreement between partners not to  
2            compete with the partnership within a reasonable area  
3            and for a reasonable period of time upon the  
4            withdrawal of a partner from the partnership;
- 5           (3) A covenant or agreement of the lessee to be restricted  
6            in the use of the leased premises to certain business  
7            or agricultural uses, or covenant or agreement of the  
8            lessee to be restricted in the use of the leased  
9            premises to certain business uses and of the lessor to  
10           be restricted in the use of premises reasonably  
11           proximate to any such leased premises to certain  
12           business uses;
- 13          (4) A covenant or agreement by an employee or agent not to  
14            use the trade secrets of the employer or principal in  
15            competition with the employee's or agent's employer or  
16            principal, during the term of the agency or  
17            thereafter, or after the termination of employment,  
18            within such time as may be reasonably necessary for  
19            the protection of the employer or principal, without  
20            imposing undue hardship on the employee or agent.



1        (d) Except as provided in subsection (c)(4), any  
2 employment contract containing a noncompete or nonsolicit clause  
3 relating to an employee of a technology business shall be void  
4 and have no force or effect.

5        As used in this subsection:

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

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

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

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

17        "Technology business" means a trade or business that  
18 derives the majority of its revenue from the sale or license of  
19 products or services resulting from its software development, or  
20 information technology development, or both. A "technology  
21 business" excludes any trade or business that is considered by



1 standard practice as part of the broadcast industry or any  
2 telecommunications carrier as defined in section 269-1, which  
3 holds a franchise or charter enacted or granted by the  
4 legislative or executive authority of the State or its  
5 predecessor governments.

6 This subsection shall apply to all written, binding  
7 noncompete and nonsolicit clauses entered into after June 30,  
8 2015."

9 SECTION 3. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on January 7, 2059.



**Report Title:**

Technology; Employment Covenants or Agreements

**Description:**

Prohibits noncompete agreements and restrictive covenants that forbid post-employment competition of employees of a technology business. Effective 01/07/2059. (SB1279 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

