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



1 these workers and have a chilling effect on the creation of new
2 businesses within the State by innovative employees.

3 Hawaii has a strong public policy promoting 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 480-
14 4(b), Hawaii Revised Statutes, may be enforced in Hawaii as long
15 as they pass a reasonableness analysis. Employers' 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 of noncompete
19 or nonsolicit agreements are unnecessary and overreaching
20 protections that unreasonably impose undue hardship upon
21 employees of technology businesses and the Hawaii economy.



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

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

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

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

20 (1) Fix, control, or maintain, the price of any commodity;



1 (2) Limit, control, or discontinue, the production,
2 manufacture, or sale of any commodity for the purpose
3 or with the result of fixing, controlling or
4 maintaining its price;

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

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

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

19 (1) A covenant or agreement by the transferor of a
20 business not to compete within a reasonable area and



1 within a reasonable period of time in connection with
2 the sale of the business;

3 (2) A covenant or agreement between partners not to
4 compete with the partnership within a reasonable area
5 and for a reasonable period of time upon the
6 withdrawal of a partner from the partnership;

7 (3) A covenant or agreement of the lessee to be restricted
8 in the use of the leased premises to certain business
9 or agricultural uses, or covenant or agreement of the
10 lessee to be restricted in the use of the leased
11 premises to certain business uses and of the lessor to
12 be restricted in the use of premises reasonably
13 proximate to any such leased premises to certain
14 business uses;

15 (4) A covenant or agreement by an employee or agent not to
16 use the trade secrets of the employer or principal in
17 competition with the employee's or agent's employer or
18 principal, during the term of the agency or
19 thereafter, or after the termination of employment,
20 within such time as may be reasonably necessary for



1 the protection of the employer or principal, without
2 imposing undue hardship on the employee or agent.

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

7 As used in this subsection:

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

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

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

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

19 "Technology business" means a trade or business that
20 derives the majority of its revenue from the sale or license of
21 products or services resulting from its software development or



1 information technology development, or both. A "technology
2 business" excludes any trade or business that is considered by
3 standard practice as part of the broadcast industry or any
4 telecommunications carrier as defined in section 269-1, which
5 holds a franchise or charter enacted or granted by the
6 legislative or executive authority of the State or its
7 predecessor governments.

8 This subsection shall apply to all written, binding
9 noncompete and nonsolicit clauses entered into after June 30,
10 2015."

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

13 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

Technology; Employment Covenants or Agreements

Description:

Prohibits noncompete agreements and restrictive covenants that forbid post-employment competition for employees of a technology business. (HB1090 HD2)

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