

JAN 29 2015

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# 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 postemployment  
2 restrictive covenants impede the development of businesses  
3 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 of the technology business sector will  
7 stimulate Hawaii's economy by preserving and providing jobs for  
8 employees in this sector and by providing opportunities for  
9 those employees to establish new companies and new job  
10 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



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.



# S.B. NO. 1279

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, post-employment contract, or separation  
5 agreement containing a noncompete or nonsolicit clause relating  
6 to an employee of a technology business is prohibited. Such  
7 agreement shall be void and of no force and effect.

8           As used in this subsection:

9           "Information technology" means any equipment or  
10 interconnected system or subsystem of equipment that is used in  
11 the automatic acquisition, storage, manipulation, management,  
12 movement, control, display, switching, interchange,  
13 transmission, or reception of data or information. The term  
14 includes computers, ancillary equipment, software, firmware and  
15 similar procedures, services, and support services, and related  
16 resources.

17           "Noncompete clause" means a clause in an employment  
18 contract, post-employment contract, or separation agreement that  
19 prohibits an employee from working in a specific geographic area  
20 for a specific period of time after leaving employment with the  
21 employer.



1       "Nonsolicit clause" means a clause in an employment  
 2       contract, post-employment contract, or separation agreement that  
 3       prohibits an employee from soliciting employees of the employer  
 4       after leaving employment with the employer.

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

7       "Technology business" means a trade or business that  
 8       derives the majority of its revenue from software development,  
 9       information technology, or both.

10       This subsection shall apply to all written, binding  
 11       noncompete and nonsolicit clauses entered into after June 30,  
 12       2015, and to all amendments adding or amending noncompete and  
 13       nonsolicit clauses in existing written agreements created prior  
 14       to July 1, 2015."

15       SECTION 3. Statutory material to be repealed is bracketed  
 16       and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

*[Handwritten signatures and names]*  
 Clarence Dishbar    Will Egan    Elizabeth Ann Oakland  
~~Elizabeth L. Anouye~~  
~~Breene Hart~~



# S.B. NO. 1279

**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.

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