

JAN 23 2014

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# A BILL FOR AN ACT

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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 technology  
3 businesses within the State by driving skilled workers to other  
4 jurisdictions and by requiring local businesses to solicit from  
5 out of the State. Eliminating restrictive covenants in the  
6 technology business sector will stimulate Hawaii's economy by  
7 preserving and providing jobs for employees in that sector and  
8 by providing opportunities for those employees to establish new  
9 companies to expand businesses 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  
13 trained 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 workers of technology businesses and have a chilling effect on  
17 the creation of new businesses within the State by innovative  
18 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 which 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'. Employer's 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 encourage the development of  
21 technology businesses in Hawaii by statutorily prohibiting



1 businesses from using noncompete agreements and restrictive  
2 covenants which forbid postemployment competition.

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 no  
11 person, exclusive of members of a single business entity  
12 consisting of a sole proprietorship, partnership, trust, or  
13 corporation, shall agree, combine, or conspire with any other  
14 person or persons, or enter into, become a member of, or  
15 participate in, any understanding, arrangement, pool, or trust,  
16 to do, directly or indirectly, any of the following acts, in the  
17 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

21 or with the result of fixing, controlling, or

22 maintaining its price;



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

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

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

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

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



1           (3) A covenant or agreement of the lessee to be restricted  
2           in the use of the leased premises to certain business  
3           or agricultural uses, or covenant or agreement of the  
4           lessee to be restricted in the use of the leased  
5           premises to certain business uses and of the lessor to  
6           be restricted in the use of premises reasonably  
7           proximate to any such leased premises to certain  
8           business uses;

9           (4) A covenant or agreement by an employee or agent not to  
10          use the trade secrets of the employer or principal in  
11          competition with the employee's or agent's employer or  
12          principal, during the term of the agency or  
13          thereafter, or after the termination of employment,  
14          within such time as may be reasonably necessary for  
15          the protection of the employer or principal, without  
16          imposing undue hardship on the employee or agent.

17          (d) Except as provided in subsection (c)(4), any covenant,  
18          agreement, ancillary restrictive covenant, or agreement which is  
19          similar, related, or subordinate to another agreement or valid  
20          transaction containing a noncompete or nonsolicit clause  
21          relating to an employee of a technology business is prohibited.  
22          Such agreement shall be void and of no force and effect.



1       As used in this subsection:

2       "Information technology" means any equipment or  
3 interconnected system or subsystem of equipment that is used in  
4 the automatic acquisition, storage, manipulation, management,  
5 movement, control, display, switching, interchange,  
6 transmission, or reception of data or information. The term  
7 includes computers, ancillary equipment, software, firmware and  
8 similar procedures, services, and support services, and related  
9 resources.

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

15       "Nonsolicit clause" means a clause in an employment  
16 contract, post-employment contract, or separation agreement that  
17 prohibits an employee from soliciting employees of the employer  
18 after leaving employment with the employer.

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

21       "Technology business" means a trade or business that relies  
22 on software development, information technology, or both.

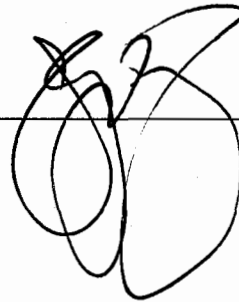


1        This subsection shall apply to all written, binding  
2        noncompete and nonsolicit clauses entered into after June 30,  
3        2014, and to all amendments adding or amending noncompete and  
4        nonsolicit clauses in existing written agreements created prior  
5        to July 1, 2014."

6        SECTION 3. New statutory material is underscored.

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

8  
INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, consisting of several overlapping loops and a final flourish, positioned over the horizontal line following the text "INTRODUCED BY:".

# S.B. NO. 3126

**Report Title:**

Restrictive Technology Employment Covenants or Agreements

**Description:**

Prohibits technology businesses from using noncompete agreements and restrictive covenants which forbid postemployment competition.

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

