HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.B. NO.

1090
H.D. 2
S.D. 2
C.D. 1

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 technology

3 businesses within the State by driving skilled workers to other

4 jurisdictions and by requiring local technology businesses to

5 solicit skilled workers from out of the State. Eliminating

6 restrictive covenants for employees of technology businesses

7 will stimulate Hawaii's economy by preserving and providing jobs

8 for employees in this sector and by providing opportunities for

9 those technology employees to establish new technology companies

10 and new job 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

17 technology workers and have a chilling effect on the creation of

1   new technology businesses within the State by innovative

2   employees.

3   Hawaii has a strong public policy to promote 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

14 480-4(b), Hawaii Revised Statutes, may be enforced in Hawaii as

15 long as they pass a reasonableness analysis. Employer 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 from

19 noncompete or nonsolicit agreements are duplicative and

20 overreaching protections that may unreasonably impose undue

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1   hardship upon employees of technology businesses and the Hawaii

2   economy.

3   The purpose of this Act is to stimulate Hawaii's economy by

4   prohibiting noncompete agreements and restrictive covenants that

5   forbid post-employment competition for employees of technology

6   businesses.

7   SECTION 2. Section 480-4, Hawaii Revised Statutes, is

8   amended to read as follows:

9   **"§480-4 Combinations in restraint of trade, price-fixing**

10 **and limitation of production prohibited.** (a) Every contract,

11 combination in the form of trust or otherwise, or conspiracy, in

12 restraint of trade or commerce in the State, or in any section

13 of this State is illegal.

14   (b) Without limiting the generality of [the foregoing]

15 subsection (a), no person, exclusive of members of a single

16 business entity consisting of a sole proprietorship,

17 partnership, trust, or corporation, shall agree, combine, or

18 conspire with any other person or persons, or enter into, become

19 a member of, or participate in, any understanding, arrangement,

20 pool, or trust, to do, directly or indirectly, any of the

21 following acts, in the State or any section of the State:

1   (1) Fix, control, or maintain[,] the price of any

2   commodity;

3   (2) Limit, control, or discontinue, the production,

4   manufacture, or sale of any commodity for the purpose

5   or with the result of fixing, controlling or

6   maintaining its price;

7   (3) Fix, control, or maintain, any standard of quality of

8   any commodity for the purpose or with the result of

9   fixing, controlling, or maintaining its price;

10   (4) Refuse to deal with any other person or persons for

11   the purpose of effecting any of the acts described in

12   paragraphs (1) to (3) [of this subsection].

13   (c) Notwithstanding [the foregoing] subsection (b) and

14 without limiting the application of [the foregoing] subsection

15 (a), it shall be lawful for a person to enter into any of the

16 following restrictive covenants or agreements ancillary to a

17 legitimate purpose not violative of this chapter, unless the

18 effect thereof may be substantially to lessen competition or to

19 tend to create a monopoly in any line of commerce in any section

20 of the State:

1   (1)   A covenant or agreement by the transferor of a

2   business not to compete within a reasonable area and

3   within a reasonable period of time in connection with

4   the sale of the business;

5   (2)   A covenant or agreement between partners not to

6   compete with the partnership within a reasonable area

7   and for a reasonable period of time upon the

8   withdrawal of a partner from the partnership;

9   (3)   A covenant or agreement of the lessee to be restricted

10   in the use of the leased premises to certain business

11   or agricultural uses, or covenant or agreement of the

12   lessee to be restricted in the use of the leased

13   premises to certain business uses and of the lessor to

14   be restricted in the use of premises reasonably

15   proximate to any such leased premises to certain

16   business uses;

17   (4)   A covenant or agreement by an employee or agent not to

18   use the trade secrets of the employer or principal in

19   competition with the employee's or agent's employer or

20   principal, during the term of the agency or

21   thereafter, or after the termination of employment,

1   within such time as may be reasonably necessary for

2   the protection of the employer or principal, without

3   imposing undue hardship on the employee or agent.

4   (d) Except as provided in subsection (c)(4), it shall be

5   prohibited to include a noncompete clause or a nonsolicit clause

6   in any employment contract relating to an employee of a

7   technology business. The clause shall be void and of no force

8   and effect.

9   As used in this subsection:

10   "Information technology development" means the design,

11   integration, deployment, or support services for software.

12   "Noncompete clause" means a clause in an employment

13   contract that prohibits an employee from working in a specific

14   geographic area for a specific period of time after leaving

15   employment with the employer.

16   "Nonsolicit clause" means a clause in an employment

17   contract that prohibits an employee from soliciting employees of

18   the employer after leaving employment with the employer.

19   "Software development" means the creation of coded computer

20   instructions.

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1   "Technology business" means a trade or business that

2   derives the majority of its gross income from the sale or

3   license of products or services resulting from its software

4   development or information technology development, or both. A

5   "technology business" excludes any trade or business that is

6   considered by standard practice as part of the broadcast

7   industry or any telecommunications carrier, as defined in

8   section 269-1, that holds a franchise or charter enacted or

9   granted by the legislative or executive authority of the State

10   or its predecessor governments."

11   SECTION 3. Statutory material to be repealed is bracketed

12   and stricken. New statutory material is underscored.

13   SECTION 4. This Act does not affect rights and duties that

14   matured, penalties that were incurred, and proceedings that were

15   begun before its effective date.

16   SECTION 5. This Act shall take effect on July 1, 2015.

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Report Title:
Technology Businesses; Employment Covenants or Agreements;
Noncompete Clause; Nonsolicit Clause

Description:
Prohibits noncompete and nonsolicit clauses in employment
contracts relating to employees of a technology business.
(HB1090 CD1)

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