

JAN 22 2016

S.B. NO. 2488

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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 a restrictive  
2       covenant not to compete with a former employer imposes a special  
3       hardship on licensed physicians, as these highly specialized  
4       professionals are trained to perform specific jobs. Due to the  
5       geographic area of Hawaii being unique and limited, noncompete  
6       agreements unduly restrict future employment opportunities for  
7       physicians and have a chilling effect on the stability and  
8       progress of medical care offered within the State. Eliminating  
9       restrictive covenants for licensed physicians will stimulate  
10      Hawaii's economy by preserving jobs for licensed physicians and  
11      by providing opportunities for those physicians to establish new  
12      job opportunities in the State.

13      The purpose of this Act is to prohibit noncompete and  
14      nonsolicit clauses in employment contracts relating to licensed  
15      physicians.

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



1       "§480-4 Combinations in restraint of trade, price-fixing  
2 and limitation of production prohibited. (a) Every contract,  
3 combination in the form of trust or otherwise, or conspiracy, in  
4 restraint of trade or commerce in the State, or in any section  
5 of this State is illegal.

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

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

15       (2) Limit, control, or discontinue[7] the production,  
16 manufacture, or sale of any commodity for the purpose  
17 or with the result of fixing, controlling, or  
18 maintaining its price;

19       (3) Fix, control, or maintain[7] any standard of quality  
20 of any commodity for the purpose or with the result of  
21 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).

(c) Notwithstanding subsection (b) and without limiting the application of 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;

(3) A covenant or agreement of the lessee to be restricted in the use of the leased premises to certain business or agricultural uses, or covenant or agreement of the



1           lessee to be restricted in the use of the leased  
2           premises to certain business uses and of the lessor to  
3           be restricted in the use of premises reasonably  
4           proximate to any such leased premises to certain  
5           business uses;

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

14          (d) Except as provided in subsection (c)(4), it shall be  
15          prohibited to include a noncompete clause or a nonsolicit clause  
16          in any employment contract relating to an employee of a  
17          technology business. The clause shall be void and of no force  
18          and effect.

19          ~~[As used in this subsection:~~

20          ~~"Information technology development" means the design,~~  
21          ~~integration, deployment, or support services for software.~~



1       ~~"Noncompete clause" means a clause in an employment~~  
2       ~~contract that prohibits an employee from working in a specific~~  
3       ~~geographic area for a specific period of time after leaving~~  
4       ~~employment with the employer.~~

5       ~~"Nonsolicit clause" means a clause in an employment~~  
6       ~~contract that prohibits an employee from soliciting employees of~~  
7       ~~the employer after leaving employment with the employer.~~

8       ~~"Software development" means the creation of coded computer~~  
9       ~~instructions.~~

10       ~~"Technology business" means a trade or business that~~  
11       ~~derives the majority of its gross income from the sale or~~  
12       ~~license of products or services resulting from its software~~  
13       ~~development or information technology development, or both. A~~  
14       ~~"technology business" excludes any trade or business that is~~  
15       ~~considered by standard practice as part of the broadcast~~  
16       ~~industry or any telecommunications carrier, as defined in~~  
17       ~~section 269-1, that holds a franchise or charter enacted or~~  
18       ~~granted by the legislative or executive authority of the State~~  
19       ~~or its predecessor governments.]~~

20       (e) Except as provided in subsection (c)(4), it shall be  
21       prohibited to include a noncompete or nonsolicit clause in any



1 employment contract relating to a licensed physician. The  
2 clause shall be void and of no force and effect.

3 (f) As used in this section:

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

6 "Licensed physician" means a physician or osteopathic  
7 physician licensed by the Hawaii medical board pursuant to  
8 chapter 453.

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

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

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

18 "Technology business" means a trade or business that  
19 derives the majority of its gross income from the sale or  
20 license of products or services resulting from its software  
21 development or information technology development, or both. A



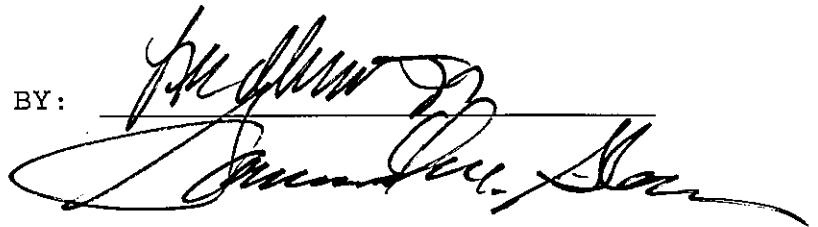
1 "technology business" excludes any trade or business that is  
2 considered by standard practice as part of the broadcast  
3 industry or any telecommunications carrier, as defined in  
4 section 269-1, that holds a franchise or charter enacted or  
5 granted by the legislative or executive authority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

7 SECTION 3. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

13 INTRODUCED BY:



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# S.B. NO. 2488

**Report Title:**

Employment Agreements; Physicians; Noncompete Clause; Nonsolicit Clause

**Description:**

Prohibits noncompete and nonsolicit clauses in employment contracts relating to licensed physicians.

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

