

**ACT 158**

H.B. NO. 1090

A Bill for an Act Relating to Employment Agreements.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that restrictive employment covenants impede the development of technology businesses within the State by driving skilled workers to other jurisdictions and by requiring local technology businesses to solicit skilled workers from out of the State. Eliminating restrictive covenants for employees of technology businesses will stimulate Hawaii's economy by preserving and providing jobs for employees in this sector and by providing opportunities for those technology employees to establish new technology companies and new job opportunities in the State.

A restrictive covenant not to compete with a former employer imposes a special hardship on employees of technology businesses as these highly specialized professionals are trained to perform specific jobs in the industry. Because the geographic area of Hawaii is unique and limited, noncompete agreements

unduly restrict future employment opportunities for technology workers and have a chilling effect on the creation of new technology businesses within the State by innovative employees.

Hawaii has a strong public policy to promote the growth of new businesses in the economy, and academic studies have concluded that embracing employee mobility is a superior strategy for nurturing an innovation-based economy. In contrast, a noncompete atmosphere hinders innovation, creates a restrictive work environment for technology employees in the State, and forces spin-offs of existing technology companies to choose places other than Hawaii to establish their businesses.

In *Technicolor, Inc v. Traeger*, 57 Haw. 113, 551 P.2d 163 (1976), the Hawaii supreme court ruled that noncompete covenants and agreements that are not per se violations under section 480-4(b), Hawaii Revised Statutes, may be enforced in Hawaii as long as they pass a reasonableness analysis. Employer trade secrets are already protected under the federal Uniform Trade Secrets Act and under section 480-4(c)(4), Hawaii Revised Statutes; therefore, the benefits to the employer from noncompete or nonsolicit agreements are duplicative and overreaching protections that may unreasonably impose undue hardship upon employees of technology businesses and the Hawaii economy.

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

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

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

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

- (1) Fix, control, or maintain~~;~~ the price of any commodity;
- (2) Limit, control, or discontinue, the production, manufacture, or sale of any commodity for the purpose or with the result of fixing, controlling or 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;
- (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 lessee to be restricted in the use of the leased premises to certain business uses and of the lessor to be restricted in the use of premises reasonably proximate to any such leased premises to certain business uses;
- (4) A covenant or agreement by an employee or agent not to use the trade secrets of the employer or principal in competition with the employee's or agent's employer or principal, during the term of the agency or thereafter, or after the termination of employment, within such time as may be reasonably necessary for the protection of the employer or principal, without imposing undue hardship on the employee or agent.

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

As used in this subsection:

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

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

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

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

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

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

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

(Approved June 26, 2015.)