OLR Bill Analysis

HB 5492

AN ACT CONCERNING LIMITATIONS ON THE USE ON NONCOMPETE AGREEMENTS.

SUMMARY

This bill limits the use of covenants not to compete (non-compete agreements) and exclusivity agreements entered into or amended on or after October 1, 2026.

It makes non-compete agreements unenforceable against employees who earn less than twice the minimum wage and independent contractors who earn less than five times the minimum wage. For workers (employees and independent contractors) who earn more than those wage thresholds, the bill specifies various conditions and requirements that limit when non-compete agreements may be enforced. Under the bill, an "independent contractor" is someone (a) retained on a basis where they are not anyone's employee for the services they provide and (b) whose compensation must be reported on an I.R.S. Form 1099 issued by the retaining person.

The bill also prohibits employers from asking or requiring workers to sign or agree to an exclusivity agreement unless (1) they earn more than its wage thresholds or (2) their additional employment, self-employment, or work as an independent contractor meets certain requirements.

The bill prohibits the courts from modifying a prohibited non-compete or exclusivity agreement in a way that will allow it to be enforced, but it also allows the prohibited provisions to be severable from other provisions.

It allows (1) workers aggrieved by a violation to bring a civil action for damages and equitable and injunctive relief in Superior Court and (2) the court to assess civil penalties of up to $5,000 against violators. It

also allows the attorney general (AG) to investigate and bring a civil action in the name of the state when an employer engages in a pattern of conduct that subjects workers to a non-compete or exclusivity agreement prohibited by the bill.

Lastly, the bill makes a conforming change to a law that currently prohibits using certain non-compete agreements for security guards, by limiting the law's applicability to agreements entered into, renewed, or extended before the bill becomes effective (§ 7).

EFFECTIVE DATE: October 1, 2026

NON-COMPETE AGREEMENTS

Under the bill, a "covenant not to compete" is a contract, provision, or other agreement entered into on or after October 1, 2026, that, for any period after a worker leaves employment, restrains or imposes penalties on them for engaging in a lawful profession, occupation, trade, calling, or business in the state.

The bill specifies that a covenant not to compete is not:

1. a non-solicitation agreement, as long as it does not restrict the worker's activities for more than one year and is no more restrictive than needed in duration, geographic scope, type of work, and type of employer;

2. a non-disclosure or confidentiality agreement;

3. a contract, provision, or agreement where an employee agrees to not reapply for employment with an employer who terminated him or her;

4. any one of certain non-compete agreements that are already regulated under current law (for physicians; people who provide companion, home health, or homemaker services; and broadcast employees); or

5. a contract, provision, or agreement made (a) anticipating a sale of the goodwill of a business or all of the seller's ownership

interest in a business or (b) as part of a partnership or ownership agreement.

A "non-solicitation agreement" is an employer's contract, provision, or agreement with:

1. an employee that prohibits the employee, after leaving employment, from soliciting (a) another employee to leave the employer or (b) a customer to cease or reduce its business with the employer or

2. a customer that prohibits the customer from soliciting the employer's employee to cease or reduce its work for the employer.

Unenforceable Non-compete Agreements

The bill makes a covenant not to compete void and unenforceable against a worker if:

1. the worker is an (a) employee with an hourly wage less than twice the minimum wage or (b) independent contractor with an hourly wage less than five times the minimum wage or

2. it applies to (a) geographic areas where the worker neither provided services nor had a material presence or influence over the two years before separating from employment or (b) types of work that the worker did not do over the two years before separating from employment.

Determining Wage Thresholds. For determining the wage threshold for workers who are not paid on an hourly basis (such as salaried employees and independent contractors), the bill requires a worker's "hourly wages" to be his or her annualized monetary compensation converted to an hourly rate by dividing it by 2,080 (the number of work-hours in 52, 40-hour weeks).

Under the bill, a worker's "annualized monetary compensation" is their wages, commissions, bonuses, and equity incentives earned (or for

independent contractors, payments made for services rendered) over the prior calendar year or portion of it, annualized based on the period of employment and calculated as of the date (1) the covenant not to compete is sought or (2) of the separation from employment, whichever is earlier.

Enforceable Non-compete Agreements

The bill allows a covenant not to compete to be enforced against a worker with wages that meet or exceed the bill's thresholds (twice the minimum wage for employees or five times the minimum wage for independent contractors) if it meets all of the following conditions.

Duration. It can last for no more than one year after the worker's separation from employment. However, it may be enforced for up to two years if it is part of an agreement that compensates the worker with his or her base salary and benefits for its duration. "Base salary and benefits" includes an employee's earned wages, commissions, bonuses, and equity incentives over the prior calendar year, plus health insurance benefits and other fringe benefits.

Necessity. It must be needed to protect the employer's legitimate business interest, as long as (1) the interest could not be protected in a less restrictive way, such as through a non-disclosure or non-solicitation agreement or under the state's uniform trade secrets law, and (2) it is no more restrictive than needed in terms of its duration, geographic scope, and type of work and employer. Under the bill, a "legitimate business interest" is an employer's interest in protecting trade secrets or confidential information, or preserving established goodwill with its customers.

Type of Worker. The worker covered by it must be exempt from the federal Fair Labor Standards Act's minimum wage and overtime requirements (for example, executive, administrative, and professional employees who meet certain criteria).

Copy & Notice. The worker must receive a copy of the covenant at least five business days before (1) the deadline to accept an employment

offer or independent contractor relationship or (2) it is signed, whichever is earlier. The copy must include a statement that:

1. not all non-compete agreements are enforceable,
2. non-compete agreements for workers who earn less than the bill's wage thresholds are illegal, and
3. the worker has a right to consult with counsel before signing it.

Execution. It must be signed by the worker or contractor and employer separately from any other agreement establishing the relationship between them.

Extra Consideration. If it is added to an existing employment or independent contractor contract, it must be supported by sufficient consideration and cannot be the only basis for continuing the employment or contract relationship.

Terminations for Good Cause. The employment or contract relationship cannot have been terminated by the worker for good cause attributable to the employer or contractor.

Adjudication. The covenant must not require a worker to submit to adjudication in a forum outside of Connecticut or otherwise deprive the worker of the bill's protections or benefits.

Legality. It must be consistent with the bill and other state laws.

EXCLUSIVITY AGREEMENTS

The bill prohibits employers from asking or requiring workers to sign or agree to an exclusivity agreement unless (1) they earn more than the bill's wage thresholds or (2) their additional employment, self-employment, or work as an independent contractor would (a) imperil the safety of the worker, their coworkers, or the public or (b) substantially interfere with reasonable and normal scheduling expectations for the worker. (On-call shift scheduling is not considered a reasonable scheduling expectation for this purpose.)

Under the bill, an "exclusivity agreement" is a contract, provision, or agreement entered into, extended, or renewed on or after October 1, 2026, that restrains a worker from, or imposes a penalty on a worker for, (1) being simultaneously employed by two different employers, (2) working as an independent contractor while employed by an employer, or (3) being self-employed while employed by an employer.

The bill specifies that it does not alter any of the worker's legal obligations to the employer, including the common law duty of loyalty, laws preventing conflicts of interest, and any corresponding policies about these obligations.

COURT LIMITATIONS

The bill prohibits the courts from modifying a prohibited non-compete or exclusivity agreement to enforce it. However, under the bill, if a court finds a non-compete or exclusivity agreement unenforceable, any other severable provisions of it must remain in full force and effect, including any provisions that require payment of damages due to injury suffered by separation from employment.

For any proceeding to enforce a non-compete or exclusivity agreement, the bill places the burden of proof on the party seeking to enforce the agreement against the worker. And in cases where an employer agreed to compensate a worker with their base salary and benefits for the non-compete agreement's duration, the party that agreed to pay the worker has the burden of proof in proceedings to stop paying the worker.

CIVIL ACTIONS

The bill allows a worker aggrieved by a violation of its provisions on non-compete and exclusivity agreements to bring a civil action for damages, civil penalties, and equitable and injunctive relief in the Superior Court for the judicial district where the violation is alleged to have occurred.

If a court finds a non-compete or exclusivity agreement in violation of the bill's provisions, the bill allows the court to assess a civil penalty

of up to $5,000 on the violator. It also allows the court to award the prevailing party reasonable costs and attorney's fees.

ATTORNEY GENERAL ACTIONS

Whenever an employer or contractor is or has engaged in a practice or pattern of conduct that subjects workers (or causes them to be subjected) to a non-compete or exclusivity agreement prohibited by the bill, the bill allows the AG to investigate, intervene, or bring a civil action in the name of the state for injunctive or declaratory relief, damages, and any other relief available under law. It allows the AG to issue subpoenas and interrogatories, and gather information in the same way and to the same extent as he may under the state's anti-trust law. No information obtained in these investigations may be used in a criminal proceeding.

If the AG prevails in the action, the bill requires the court to distribute any damages awarded to the injured worker. The court may also award civil penalties of up to $5,000 against each defendant. But an employer or contractor, officer, or agent found in violation of the bill cannot also be liable for an additional penalty under the state law on retaliation over wage complaints.

The bill also allows the AG, instead of bringing a civil action, to accept an employer's assurance that it will stop any alleged unlawful practice. After that, any evidence of a violation of this assurance becomes prima facie proof of a violation of the applicable law in any action the AG takes.

The bill specifies that nothing in its enforcement provisions allows the AG to bring an action that would otherwise be barred under the applicable statute of limitations.

Lastly, the bill specifies that it does not authorize the AG to assert any claim against a state agency, or state officer or employee in their official capacity, over their actions or omissions. However, if the AG determines that a state officer or employee is not entitled to the indemnification provided by state law (for example, due to their wanton, reckless, or malicious actions), he can take any action authorized under the bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable
Yea 9 Nay 4 (03/19/2026)