SENATE, No. 1407

STATE OF NEW JERSEY

222nd LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

Sponsored by:
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SYNOPSIS

Prohibits non-compete clauses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT prohibiting non-compete clauses and supplementing Title 34 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Business entity" means a private business, including, but not limited to, an individual proprietorship, partnership, corporation, association, limited liability company, joint venture, firm, company or other legal entity, or a division or subsidiary of the business entity.

"Employer" means a business entity or other employer that employs one or more workers, or has one or more workers working for the employer by providing a service to or on behalf of the employer, including a charitable organization, a public corporation, and the State and its instrumentalities and political subdivisions.

"Fringe benefit" means any vacation leave, sick leave, medical insurance plan, disability or life insurance plan, pension benefit plan, or any other benefit of economic value, to the extent that the leave, plan, or benefit is paid for in whole or in part by the employer.

"Misconduct" means conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the lawful and reasonable employer rules made known to the worker, or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

"Non-compete clause" means any agreement arising out of an existing or anticipated employment relationship between an employer and a worker, including an agreement regarding severance pay, to establish a term or condition of employment that prohibits the worker from, penalizes a worker for, or functions to prevent or hinder in any way, the worker from seeking or accepting work with a different employer after the employment relationship ends, or operating a business after the employment relationship ends. For the purposes of this act "agreement" includes, but is not limited to, a contractual term or workplace policy, whether written or oral.

"No-poach agreement" means any agreement between employers or between an employer acting as a contractor and any legal person acting as a contractee that restricts or hinders the ability of an employer to hire, or contract for the services of, a worker, or hinders a worker from obtaining employment.

"Officer" means a president, vice president, secretary, treasurer, principal financial officer, comptroller, principal accounting officer,

or any individual routinely performing corresponding functions with respect to a business entity whether incorporated or unincorporated.

"Pay" means hourly wages or periodic salary, including tips, regularly paid and nondiscretionary commissions and bonuses, and regularly paid overtime. "Pay" shall not mean fringe benefits.

"Policy-making authority" means final authority to make policy decisions that control significant aspects of a business entity or common enterprise of which the entity participates.

"Policy-making position" means a business entity's president, chief executive officer or the equivalent, any other officer of a business entity who has policy-making authority, or any other individual who has policy-making authority for the business entity similar to an officer with policy-making authority. An officer of a subsidiary or affiliate of a business entity that is part of a common enterprise who has policy-making authority for the common enterprise may be deemed to have a policy-making position for purposes of this paragraph.

"Senior executive" means a worker who is in a policy-making position with an employer and is paid total compensation of not less than $151,164 during the year immediately preceding the end of employment, or not less than $151,164 when annualized if the worker was employed during only part of the preceding year. Total compensation includes salary, commissions, nondiscretionary bonuses and other nondiscretionary compensation, but does not include board, lodging and other facilities, or other fringe benefits.

"Trade secrets" has the meaning given in section 2 of the "New Jersey Trade Secrets Act," P.L.2011, c.161 (C.56:15-2).

"Worker" means an individual who works, or previously worked, for an employer by providing a service to, or on behalf of, the employer, whether the worker is paid or unpaid, without regard to the worker's title or the worker's status under any other State or federal law, including, but not limited to, a worker who works in a supervisory, managerial, or confidential position, a worker who works as an employee, independent contractor, extern, intern, volunteer, apprentice, or sole proprietor, or a worker who works for a franchisee or franchisor, but not including a franchisee in the context of a franchisee-franchisor relationship.

2. a. With respect to a worker who is not a senior executive, an employer shall not: seek, require, demand, or accept a non-compete clause from the worker after the effective date of this act; enforce or attempt to enforce a non-compete clause, including a non-compete clause entered into before the effective date of this act; or represent that the worker is subject to a non-compete clause.

b. With respect to a worker who is a senior executive, an employer shall not: seek, require, demand, or accept a non-compete clause from a worker after the effective date of this act; enforce or

attempt to enforce a non-compete clause entered into after the effective date of this act; or represent that the worker is subject to a non-compete clause entered into after the effective date of this act.

3. For any non-compete clause that is in effect upon the enactment of this act other than a non-compete clause with a senior executive, the employer shall provide a clear and conspicuous notice to the worker not more than 30 business days after the effective date of this act that the non-compete clause will not be, and cannot legally be, enforced against the worker. The notice shall identify the employer and be on paper delivered by hand to the worker, or by mail at the worker's last known personal street address, or by email at an email address of the worker, including the worker's work email address or last known personal email address, or by text message at a worker's mobile telephone number. For the purposes of this section, the following model language constitutes the required notice to the worker that the worker's non-compete clause cannot legally be enforced and will not be enforced against the worker:

"A State law, (P.L. , c. (C.)(now pending before the Legislature as this bill)), makes it unlawful for us to enforce a non-compete clause. As of (the date chosen by the employer but not later than the effective date of P.L. , c. (C.)(now pending before the Legislature as this bill)) we will not enforce any non-compete clause against you. This means that as of that date:

1. You may seek or accept a job with any company or any person---even if they compete with (employer name).

2. You may run your own business---even if it competes with (employer name).

3. You may compete with (employer name) following your employment with (employer name).

This law does not affect any other terms or conditions of your employment, or diminish in any way rights you have under other employment laws."

In addition to providing the notice required by this section in English, an employer is permitted to provide the notice in a language (or in languages) other than English or to include internet links to translations in additional languages. The employer may use any translation of the model language approved by the Department of Labor and Workforce Development.

4. In the case of a non-complete clause between an employer and worker who is a senior executive which was entered into prior to, and is in effect upon, the effective date of this act, the non-compete clause shall be void and not enforceable unless it meets the following requirements:

a. The employer shall provide a disclosure of the terms of the non-compete clause in writing to the worker not more than 30

business days after the effective date of this act which includes a description of the requirements of this section and all revisions made in the provisions of the non-compete clause necessary for compliance with the requirements of this section. If the non-compete clause is revised pursuant to this subsection, the revised non-compete clause shall be signed by the employer and the worker. The disclosure shall expressly state that the worker has the right to consult with counsel prior to signing.

b. The non-compete clause shall not be broader than necessary to protect the legitimate business interests of the employer, including the employer's trade secrets or other confidential information, including sales information, business strategies and plans, customer information, and price information. A non-compete clause may be presumed necessary if the legitimate business interests cannot be adequately protected through an alternative arrangement, including but not limited to: an agreement not to solicit or hire employees of the employer; an agreement not to solicit or transact business with customers, clients, referral sources, or vendors of the employer; or a nondisclosure or confidentiality agreement.

c. The period in which the non-compete clause restricts the worker's engaging in activities competitive with the worker's former employer does not to exceed 12 months following the date of termination of employment.

d. The non-compete clause shall be reasonable in geographical reach and limited to the geographic areas in which the worker provided services or had a material presence or influence during the two years preceding the date of termination of employment, and shall not prohibit the worker from seeking employment in other states.

e. The non-compete clause shall be reasonable in the scope of proscribed activities in relation to the interests protected and limited to only the specific types of services provided by the worker at any time during the last two years of employment.

f. The non-compete clause shall not penalize a worker for defending against or challenging the validity or enforceability of the non-compete clause.

g. The non-compete clause shall not contain a choice of law provision that would have the effect of avoiding the requirements of this section, if the worker is, and has been for at least 30 days immediately preceding the worker's termination of employment, a resident of or employed in the State.

h. The non-compete clause shall not waive the worker's substantive, procedural and remedial rights provided under this act, any other act or administrative regulation, or under the common law.

i. The non-compete clause shall not restrict a worker from providing a service to a customer or client of the employer, if the worker does not initiate or solicit the customer or client.

j. The non-compete clause shall not be unduly burdensome on the worker, injurious to the public, or inconsistent with public policy.

k. The non-compete clause provides it shall be void if the employer does not provide written notice to the worker of the employer's intent to enforce the non-compete clause within 10 days after the termination of an employment relationship between the employer and the worker. This subsection shall not apply if the worker has been terminated for misconduct.

l. The non-compete clause provides that during any period after the employment relationship ends in which the worker is prevented from engaging in work or taking employment because of restrictions imposed by the non-compete clause, the employer, unless the worker is terminated for misconduct or there is a breach by the worker, shall pay the worker an amount equal to 100 percent of the pay to which the worker would be entitled for the work during that period; and make any benefit contributions needed to maintain the fringe benefits to which the worker would be entitled during that period.

5. The requirements of this act shall not apply:

a. To a non-compete clause that is entered into by an employer pursuant to a bona fide sale of a business entity, of the employer's ownership interest in a business entity, or of all or substantially all of a business entity's operating assets; or

b. Where a cause of action related to a non-compete clause accrued prior to the effective date.

6. No-poach agreements are hereby declared to be contrary to public policy and any no-poach agreement shall be void.

7. A worker subject to, or affected by, a non-compete clause or no-poach agreement prohibited by this act may bring a civil action in a court of competent jurisdiction against any employer alleged to have violated this act. A worker may bring the action within two years of the later of:

a. When a prohibited non-compete clause or a no-poach agreement was signed or entered into;

b. When the worker learns of the prohibited non-compete clause or a no-poach agreement;

c. When the employment relationship is terminated; or

d. When the employer takes any step to enforce the non-compete clause or a no-poach agreement.

The court shall have jurisdiction to void any agreement and to order all appropriate relief, including: enjoining the conduct of the

employer; ordering payment of liquidated damages; and awarding lost compensation, damages, reasonable attorneys' fees and costs. For the purposes of this section, liquidated damages shall be calculated as an amount not more than $10,000.

8. Every employer shall post a copy of this act or a summary approved by the Department of Labor and Workforce Development in a prominent place in the work area. An employer who fails to post a copy of this act or a summary of this act, or provide the notice to workers required by section 3 of this act that previous non-compete clauses are no longer valid and enforceable, or provide a notice to workers required by section 4 of this act concerning non-compete clauses for senior executives, shall be issued by the department a written warning for the first violation, and shall be fined up to $250 for a second violation and up to $1,000 for the third and each subsequent violation. A penalty imposed by the department pursuant to this section shall be collected and enforced by summary proceedings pursuant to the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

9. This act shall take effect immediately.

STATEMENT

This bill prohibits non-compete clauses, with certain exceptions, and prohibits no-poach agreements.

The bill provides that no private, public, or nonprofit employer may seek, require, demand, or accept a non-compete agreement from any employee or other individual who provides services for, on behalf of the employer, whether the individual is paid or unpaid, including an independent contractor, extern, intern, volunteer, apprentice, or sole proprietor. A non-compete clause is defined by the bill as any agreement between an employer and a covered individual that prohibits or restricts that covered individual from obtaining employment after the conclusion of employment with the employer included as a party to the agreement.

The bill provides that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void. Regarding non-compete clauses in effect when the bill goes into effect, the bill requires that employer to notify the affected employees that those non-compete clauses are no longer valid and not enforceable.

The bill provides the following exceptions to the prohibition on non-compete clauses:

1. When a cause of action related to a non-compete clause accrued prior to the effective date of the bill;

2. Non-compete clauses entered into by an employer pursuant to a bona fide sale of a business entity or its operating assets, or of the employer's ownership interest in a business entity; or

3. Non-compete clauses between employers and senior executives which were entered into prior to the effective date of the bill will remain valid if they meet certain requirements specified by the bill, or are modified to meet the requirements.

The bill's requirements for existing non-compete clause for senior executives include:

1. That the non-compete clause is not broader than necessary to protect legitimate interests of the employer, including trade secrets and other confidentiality issues;

2. That the period in which employment for a worker is restricted not be longer than 12 months;

3. That there be no retaliation against a worker for defending rights provided by the bill and no waiver of the worker's rights provided by the bill or other law;

4. That the non-complete clause is related to the work actually done by the worker and the geographic area where the work was done.

The bill also prohibits employers from entering no-poach agreements to not hire each other's employees or former employees.

A covered individual may bring a civil action in a court of competent jurisdiction against any employer or person alleged to have violated the provisions of the bill. The court has jurisdiction to void any non-compete clause or no-poach agreement and to order appropriate relief. The bill also authorizes the Department of Labor and Workforce Development to impose penalties on employers for failing to provide the notifications to employees required by the bill.