

2023 -- S 0888

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RHODE ISLAND
NONCOMPETITION AGREEMENT ACT

Introduced By: Senators LaMountain, Lauria, McKenney, Tikoian, Burke, and Valverde

Date Introduced: March 30, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-59-2 and 28-59-3 of the General Laws in Chapter 28-59 entitled
2 "Rhode Island Noncompetition Agreement Act" are hereby amended to read as follows:

3 **28-59-2. Definitions.**

4 As used in this chapter:

5 (1) "Business entity" means any person as defined in § 43-3-6 and includes a corporation,
6 business trust, estate trust, partnership, association, joint venture, government, governmental
7 subdivision or agency, or any other legal or commercial entity.

8 (2) ~~"Earnings" means wages or compensation paid to an employee in the first forty (40)~~
9 ~~hours of work in a given week, not inclusive of hours paid at an overtime, Sunday, or holiday rate.~~

10 (3) "Employee" means an individual who works for hire, including an individual employed
11 in a supervisory, managerial, or confidential position, but shall not include an independent
12 contractor.

13 (4) "Employer" means any person, business entity, partnership, individual proprietorship,
14 joint venture, firm, company, or other similar legal entity who or that employs one or more
15 employees, and shall include the state and its instrumentalities and political subdivisions, public
16 corporations, and charitable organizations.

17 (5) "Forfeiture agreement" means an agreement that imposes adverse financial
18 consequences on a former employee as a result of the termination of an employment relationship,

1 regardless of whether the employee engaged in competitive activities, following cessation of the
2 employment relationship. Forfeiture agreements do not include forfeiture for competition
3 agreements.

4 (6) “Forfeiture for competition agreement” means an agreement that by its terms or through
5 the manner in which it is enforced, imposes adverse financial consequences on a former employee
6 as a result of the termination of an employment relationship if the employee engages in competitive
7 activities.

8 (7) ~~“Low wage employee” means an employee whose average annual earnings, as defined~~
9 ~~in subsection (2), are not more than two hundred fifty percent (250%) of the federal poverty level~~
10 ~~for individuals as established by the United States Department of Health and Human Services~~
11 ~~federal poverty guidelines.~~

12 (8) “Noncompetition agreement” means an agreement not to compete with a specific
13 business or entity to include, but not be limited to, an agreement prohibited by the provisions of §
14 28-59-3(a) between an employer and an employee, or otherwise arising out of an existing or
15 anticipated employment relationship, under which the employee or expected employee agrees that
16 he or she will not engage in certain specified activities competitive with his or her employer after
17 the employment relationship has ended. Noncompetition agreements include forfeiture for
18 competition agreements, but do not include:

19 (i) Covenants not to solicit or hire employees of the employer;

20 (ii) ~~Covenants not to solicit or transact business with customers, clients, or vendors of the~~
21 ~~employer;~~

22 (iii) Noncompetition agreements made in connection with the sale of a business entity or
23 all or substantially all of the operating assets of a business entity or partnership, or otherwise
24 disposing of the ownership interest of a business entity or partnership, or division or subsidiary of
25 any of the foregoing, when the party restricted by the noncompetition agreement is a significant
26 owner of, or member or partner in, the business entity who will receive significant consideration or
27 benefit from the sale or disposal;

28 (iv) Noncompetition agreements originating outside of an employment relationship;

29 (v) Forfeiture agreements;

30 (vi) Nondisclosure or confidentiality agreements;

31 (vii) Invention assignment agreements;

32 (viii) ~~Noncompetition agreements made in connection with the cessation of or separation~~
33 ~~from employment if the employee is expressly granted seven (7) business days to rescind~~
34 ~~acceptance; or~~

1 (ix) Agreements by which an employee agrees to not reapply for employment to the same
2 employer after termination of the employee.

3 (9) "Trade secret" means information as defined in § 6-41-1.

4 **28-59-3. Enforceability.**

5 (a) Except as provided in subsection (d) of this section, A a noncompetition agreement
6 shall not be enforceable against an employee. ~~the following types of workers:~~

7 ~~(1) An employee who is classified as nonexempt under the Fair Labor Standards Act, 29~~
8 ~~U.S.C. §§ 201-219;~~

9 ~~(2) Undergraduate or graduate students who participate in an internship or otherwise enter~~
10 ~~a short term employment relationship with an employer, whether paid or unpaid, while enrolled at~~
11 ~~an educational institution;~~

12 ~~(3) Employees age eighteen (18) or younger; or~~

13 ~~(4) A low wage employee.~~

14 (b) A noncompetition agreement may be enforceable if reasonable in scope, time-frame
15 and application and the noncompetition agreement is entered pursuant to an agreement to sell a
16 business entity or an equity interest in a business.

17 ~~(b)(c)~~ (c) This section does not render void or unenforceable the remainder of a contract or
18 agreement containing the unenforceable noncompetition agreement, nor does it preclude the
19 imposition of a noncompetition restriction by a court, whether through preliminary or permanent
20 injunctive relief or otherwise, as a remedy for a breach of another agreement or of a statutory or
21 common law duty.

22 ~~(e)(d)~~ (d) Nothing in this section shall preclude an employer from entering into an agreement
23 with an employee not to share any information, including after the employee is no longer employed
24 by the employer, regarding the employer or the employment that is a trade secret, customer lists,
25 including the names, addresses, identities of customers, or future business plans.

26 (e) Any noncompetition agreement in violation of subsection (a) of this section shall be
27 null and void as a violation of public policy.

28 SECTION 2. Chapter 28-59 of the General Laws entitled "Rhode Island Noncompetition
29 Agreement Act" is hereby amended by adding thereto the following section:

30 **28-59-4. Civil action by employer.**

31 An employer may bring a civil action against any employee who, pursuant to an agreement
32 described in § 28-59-3(d), violates that agreement and discloses or wrongfully utilizes trade secrets,
33 and the successful employer may be awarded injunctive relief, compensatory damages, punitive
34 damages, attorneys' fees and costs.

1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RHODE ISLAND
NONCOMPETITION AGREEMENT ACT

- 1 This act would prohibit noncompetition agreements except for noncompetition agreements
- 2 between a seller and buyer of a business.
- 3 This act would take effect upon passage.

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