

131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1496

H.P. 951

House of Representatives, April 5, 2023

An Act to Prohibit Noncompete Clauses

Reference to the Committee on Labor and Housing suggested and ordered printed.

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative WARREN of Scarborough. Cosponsored by Senator TIPPING of Penobscot and Representative: ROEDER of Bangor.

1	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 26 MRSA §599-A, as enacted by PL 2019, c. 513, §1, is amended to read:
3	§599-A. Noncompete agreements
4 5	1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
6 7 8 9	A. "Federal poverty level" means the nonfarm income official poverty line for an individual, as defined by the federal Office of Management and Budget and revised annually in accordance with the Omnibus Budget Reconciliation Act of 1981, Section 673(2).
10 11 12 13	B. "Noncompete agreement" means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment.
14 15 16 17 18	2. Public policy; enforceability of noncompete agreements. Noncompete agreements are contrary to public policy and are enforceable <u>only in situations described</u> <u>in subsection 3-B and</u> only to the extent that they are reasonable and are no broader than necessary to protect one or more of the following legitimate business interests of the <u>employer:</u> .
19	A. The employer's trade secrets, as defined in Title 10, section 1542, subsection 4;
20	B. The employer's confidential information that does not qualify as a trade secret; or
21	C. The employer's goodwill.
22 23 24	A noncompete agreement may be presumed necessary if the legitimate business interest cannot be adequately protected through an alternative restrictive covenant, including but not limited to a nonsolicitation agreement or a nondisclosure or confidentiality agreement.
25 26 27	3. Prohibited for certain workers. Notwithstanding subsection 2, an employer may not require or permit an employee earning wages at or below 400% of the federal poverty level to enter into a noncompete agreement with the employer.
28 29	3-A. Noncompete agreements prohibited. An employer may not require or permit an employee to enter into a noncompete agreement with the employer.
30 31	3-B. Exceptions. Noncompete agreements are allowable in the following situations, in accordance with subsection 2 and subject to the requirements of this section.
32 33 34	A. A seller of a business in this State may be bound by a noncompete agreement prohibiting the seller from opening a competing business in the same geographic area as the business that was sold;
35 36 37	B. A shareholder in a limited liability company organized under the laws of this State may be bound by a noncompete agreement if the shareholder sells or disposes of all of the shareholder's shares; or
38 39	C. A member of a partnership organized under the laws of this State may be bound by a noncompete agreement if the partnership is dissolved.

- 1**3-C. Out-of-state agreements.** A noncompete agreement between an out-of-state2employer and a resident of this State is unenforceable. If the noncompete agreement made3between an out-of-state employer and a resident of this State includes a choice of law4provision, this State may not enforce that provision if it violates the State's public policy5described under subsection 2.
- 6 4. Disclosure; notice. An employer shall disclose prior to an offer of employment
 7 with the employer that will require the acceptance of a noncompete agreement a statement
 8 that a noncompete agreement will be required.

An employer shall notify an employee or prospective employee of a noncompete agreement
 requirement and provide a copy of the noncompete agreement not less than 3 business days
 before the employer requires the agreement to be signed to allow time for the employee or
 prospective employee to review the agreement and negotiate the terms of the agreement or
 employment with the employer if the employee or prospective employee wishes to do so.

- 4-A. Posted notice required. The Department of Labor shall create a poster
 containing the laws governing noncompete agreements under this section that employers
 shall post in a central workplace location. The poster must be printed in a minimum font
 size, as determined by the Department of Labor, in accordance with provisions of law
 governing disability-related accommodations.
- 19 5. Effective date of a noncompete agreement. Except for a noncompete agreement 20 between an employer and an allopathic physician or an osteopathic physician licensed 21 under Title 32, chapter 48 or chapter 36, respectively, the terms of a noncompete agreement 22 do not take effect until after one year of the employee's employment with the employer or 23 a period of 6 months from the date the agreement was signed, whichever is later.
- 6. Penalty; enforcement. An employer that violates subsection 3 or 4 3 A commits
 a civil violation for which a fine of not less than \$5,000 may be adjudged. The Department
 of Labor is responsible for enforcement of this section.
- **7. Application.** This section applies to all noncompete agreements entered into or
 renewed after the effective date of this section.

29

SUMMARY

This bill prohibits an employer from requiring or permitting an employee to enter into a noncompete agreement with the employer, regardless of the amount of the employee's earned wages. It prohibits noncompete agreements between an out-of-state employer and a resident of this State. It authorizes noncompete agreements in specific nonemploymentrelated situations, subject to certain conditions.