



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3430

Introduced 2/14/2020, by Sen. Heather A. Steans

SYNOPSIS AS INTRODUCED:

820 ILCS 90/5
820 ILCS 90/15 new
820 ILCS 90/20 new
820 ILCS 90/25 new

Amends the Illinois Freedom to Work Act. Extends the applicability of the Act to all employees. Provides that a covenant not to compete is illegal and void if the employee does not receive adequate consideration and the covenant is ancillary to a valid employment relationship. Requires covenants not to compete to be no more expansive than required for the protection of legitimate business interests, to not impose undue hardship on the employee, and to not be injurious to the public. Specifies notice and an opportunity for review to be given to the employee. Authorizes employees to recover costs and attorney's fees.

LRB101 17408 JLS 66813 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Freedom to Work Act is amended by
5 changing Section 5 and by adding Sections 15, 20, and 25 as
6 follows:

7 (820 ILCS 90/5)

8 Sec. 5. Definitions. In this Act:

9 "Covenant not to compete" means an agreement:

10 (1) between an employer and an ~~a low wage~~ employee that
11 restricts the ~~such low wage~~ employee from performing:

12 (A) any work for another employer for a specified
13 period of time;

14 (B) any work in a specified geographical area; or

15 (C) work for another employer that is similar to
16 the ~~such low wage~~ employee's work for the employer
17 included as a party to the agreement; and

18 (2) that is entered into after the effective date of
19 this amendatory Act of the 101st General Assembly.

20 "Covenant not to compete" also means an agreement that by
21 its terms imposes adverse financial consequences on a former
22 employee if the employee engages in competitive activities
23 after the termination of the employee's employment with the

1 employer.

2 "Employee" has the meaning ascribed to that term in Section
3 2 of the Wage Payment and Collection Act.

4 "Employer" has the meaning given to such term in subsection
5 (c) of Section 3 of the Minimum Wage Law. "Employer" does not
6 include governmental or quasi-governmental bodies.

7 "Low-wage employee" means an employee whose earnings do not
8 exceed the greater of (1) the hourly rate equal to the minimum
9 wage required by the applicable federal, State, or local
10 minimum wage law or (2) \$13.00 per hour.

11 (Source: P.A. 99-860, eff. 1-1-17; 100-225, eff. 8-18-17.)

12 (820 ILCS 90/15 new)

13 Sec. 15. Enforceability of a covenant not to compete.

14 (a) A covenant not to compete entered into between an
15 employer and employee is illegal and void unless (i) the
16 employee receives adequate consideration and (ii) it is
17 ancillary to a valid employment relationship.

18 (b) An employee has not received adequate consideration
19 from an employer for a covenant not to compete unless (i) the
20 employee worked for the employer for at least 2 years from the
21 date the employee signed the covenant not to compete or (ii)
22 the employer provided the employee with some other fair and
23 reasonable consideration specifically bargained for in
24 exchange for the covenant not to compete.

25 (c) A covenant not to compete entered into between an

1 employer and employee is illegal and void unless it (i) is no
2 greater than is required for the protection of a legitimate
3 business interest of the employer, (ii) does not impose undue
4 hardship on the employee, and (iii) is not injurious to the
5 public. Whether a legitimate business interest exists is based
6 on the totality of the facts and circumstances of the
7 individual case. Factors to be considered in this analysis
8 include, but are not limited to, the near-permanence of
9 customer relationships, the employee's acquisition of
10 confidential information through the employee's employment,
11 and time and place restrictions.

12 (820 ILCS 90/20 new)

13 Sec. 20. Ensuring employees are informed about their
14 obligations.

15 (a) A covenant not to compete entered into between an
16 employer and employee is illegal and void unless the employer
17 advises the employee in writing to consult with an attorney
18 before entering into the covenant not to compete.

19 (b) A covenant not to compete entered into between an
20 employer and employee is illegal and void unless (i) the
21 employer provides the employee with a copy of the covenant not
22 to compete at least 10 business days before the commencement of
23 the employee's employment or (ii) the employer provides the
24 employee with at least 21 days to review the covenant not to
25 compete.

1 (820 ILCS 90/25 new)

2 Sec. 25. Remedies. In a civil action initiated by an
3 employer involving a covenant not to compete, in addition to
4 any remedies available under any agreement between an employer
5 and an employee, a prevailing employee shall recover costs and
6 all reasonable attorney's fees.