



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5385

Introduced 2/9/2024, by Rep. Anna Moeller

SYNOPSIS AS INTRODUCED:

820 ILCS 90/5
820 ILCS 90/10
820 ILCS 90/15
820 ILCS 90/17 new
820 ILCS 90/7 rep.
820 ILCS 90/20 rep.
820 ILCS 90/35 rep.

Amends the Illinois Freedom to Work Act. Provides that no employer shall enter into a covenant not to compete or a covenant not to solicit with any employee (rather than no employer shall enter into a covenant not to compete or a covenant not to solicit with any employee unless the employee's actual or expected annualized rate of earnings exceeds \$75,000 per year). Provides that an employer or former employer shall not attempt to enforce a contract that is void and unenforceable under the Act regardless of whether the contract was signed and the employment was maintained outside of the State. Provides that, on or before April 1, 2025, an employer who entered into a covenant not to compete or a covenant not to solicit with an employee, or a former employees who was employed after January 1, 2023, shall notify the employee or the former employee that the covenant not to compete or the covenant not to solicit is void and unenforceable. Repeals provisions concerning the legitimate business interest of the employer; ensuring employees are informed about their obligations; and reformation of covenants not to compete and covenants not to solicit. Makes changes to definitions. Makes conforming changes.

LRB103 35450 SPS 65519 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 Sections 5, 10, and 15 and by adding Section 17 as
6 follows:

7 (820 ILCS 90/5)

8 Sec. 5. Definitions. In this Act:

9 ~~"Adequate consideration" means (1) the employee worked for~~
10 ~~the employer for at least 2 years after the employee signed an~~
11 ~~agreement containing a covenant not to compete or a covenant~~
12 ~~not to solicit or (2) the employer otherwise provided~~
13 ~~consideration adequate to support an agreement to not compete~~
14 ~~or to not solicit, which consideration can consist of a period~~
15 ~~of employment plus additional professional or financial~~
16 ~~benefits or merely professional or financial benefits adequate~~
17 ~~by themselves.~~

18 "Covenant not to compete" means an agreement between an
19 employer and an employee ~~that is entered into after the~~
20 ~~effective date of this amendatory Act of the 102nd General~~
21 ~~Assembly~~ that restricts the employee from performing:

22 (1) any work for another employer for a specified
23 period of time;

- 1 (2) any work in a specified geographical area; or
2 (3) work for another employer that is similar to
3 employee's work for the employer included as a party
4 to the agreement.

5 "Covenant not to compete" also means an agreement between
6 an employer and an employee, ~~entered into after the effective~~
7 ~~date of this amendatory Act of the 102nd General Assembly,~~
8 that by its terms imposes adverse financial consequences on
9 the former employee if the employee engages in competitive
10 activities after the termination of the employee's employment
11 with the employer.

12 "Covenant not to compete" does not include (1) a covenant
13 not to solicit, (2) a confidentiality agreement or covenant,
14 (3) a covenant or agreement prohibiting use or disclosure of
15 trade secrets or inventions, (4) invention assignment
16 agreements or covenants, (5) a covenant or agreement entered
17 into by a person purchasing or selling the goodwill of a
18 business or otherwise acquiring or disposing of an ownership
19 interest, (6) clauses or an agreement between an employer and
20 an employee requiring advance notice of termination of
21 employment, during which notice period the employee remains
22 employed by the employer and receives compensation, or (7)
23 agreements by which the employee agrees not to reapply for
24 employment to the same employer after termination of the
25 employee.

26 "Covenant not to solicit" means an agreement ~~that is~~

1 ~~entered into after the effective date of this amendatory Act~~
2 ~~of the 102nd General Assembly~~ between an employer and an
3 employee that (1) restricts the employee from soliciting for
4 employment the employer's employees or (2) restricts the
5 employee from soliciting, for the purpose of selling products
6 or services of any kind to, or from interfering with the
7 employer's relationships with, the employer's clients,
8 prospective clients, vendors, prospective vendors, suppliers,
9 prospective suppliers, or other business relationships.

10 ~~"Earnings" means the compensation, including earned~~
11 ~~salary, earned bonuses, earned commissions, or any other form~~
12 ~~of taxable compensation, reflected or that is expected to be~~
13 ~~reflected as wages, tips, and other compensation on the~~
14 ~~employee's IRS Form W-2 plus any elective deferrals not~~
15 ~~reflected as wages, tips, and other compensation on the~~
16 ~~employee's IRS Form W-2, such as, without limitation, employee~~
17 ~~contributions to a 401(k) plan, a 403(b) plan, a flexible~~
18 ~~spending account, or a health savings account, or commuter~~
19 ~~benefit related deductions.~~

20 "Employee" means any individual permitted to work by an
21 employer in an occupation.

22 "Employer" has the meaning given to such term in
23 subsection (c) of Section 3 of the Minimum Wage Law.

24 "Employer" does not include governmental or quasi-governmental
25 bodies.

26 ~~"Construction" means any constructing, altering,~~

1 ~~reconstructing, repairing, rehabilitating, refinishing,~~
2 ~~refurbishing, remodeling, remediating, renovating, custom~~
3 ~~fabricating, maintenance, landscaping, improving, wrecking,~~
4 ~~painting, decorating, demolishing, and adding to or~~
5 ~~subtracting from any building, structure, highway, roadway,~~
6 ~~street, bridge, alley, sewer, ditch, sewage disposal plant,~~
7 ~~water works, parking facility, railroad, excavation or other~~
8 ~~structure, project, development, real property or improvement,~~
9 ~~or to do any part thereof, whether or not the performance of~~
10 ~~the work herein described involves the addition to, or~~
11 ~~fabrication into, any structure, project, development, real~~
12 ~~property or improvement herein described of any material or~~
13 ~~article of merchandise.~~

14 (Source: P.A. 102-358, eff. 1-1-22.)

15 (820 ILCS 90/10)

16 Sec. 10. Prohibiting covenants not to compete and
17 covenants not to solicit.

18 (a) No employer shall enter into a covenant not to compete
19 with any employee ~~unless the employee's actual or expected~~
20 ~~annualized rate of earnings exceeds \$75,000 per year. This~~
21 ~~amount shall increase to \$80,000 per year beginning on January~~
22 ~~1, 2027, \$85,000 per year beginning on January 1, 2032, and~~
23 ~~\$90,000 per year beginning on January 1, 2037.~~ A covenant not
24 to compete entered into in violation of this subsection is
25 void and unenforceable.

1 (b) No employer shall enter into a covenant not to solicit
2 with any employee ~~unless the employee's actual or expected~~
3 ~~annualized rate of earnings exceeds \$45,000 per year. This~~
4 ~~amount shall increase to \$47,500 per year beginning on January~~
5 ~~1, 2027, \$50,000 per year beginning on January 1, 2032, and~~
6 ~~\$52,500 per year beginning on January 1, 2037.~~ A covenant not
7 to solicit entered into in violation of this subsection is
8 void and unenforceable.

9 (c) (Blank). ~~No employer shall enter into a covenant not~~
10 ~~to compete or a covenant not to solicit with any employee who~~
11 ~~an employer terminates or furloughs or lays off as the result~~
12 ~~of business circumstances or governmental orders related to~~
13 ~~the COVID-19 pandemic or under circumstances that are similar~~
14 ~~to the COVID-19 pandemic, unless enforcement of the covenant~~
15 ~~not to compete includes compensation equivalent to the~~
16 ~~employee's base salary at the time of termination for the~~
17 ~~period of enforcement minus compensation earned through~~
18 ~~subsequent employment during the period of enforcement. A~~
19 ~~covenant not to compete or a covenant not to solicit entered~~
20 ~~into in violation of this subsection is void and~~
21 ~~unenforceable.~~

22 (d) A covenant not to compete is void and illegal with
23 respect to individuals covered by a collective bargaining
24 agreement under the Illinois Public Labor Relations Act or the
25 Illinois Educational Labor Relations Act and individuals
26 employed in construction. ~~This subsection (d) does not apply~~

1 ~~to construction employees who primarily perform management,~~
2 ~~engineering or architectural, design, or sales functions for~~
3 ~~the employer or who are shareholders, partners, or owners in~~
4 ~~any capacity of the employer.~~

5 (Source: P.A. 102-358, eff. 1-1-22.)

6 (820 ILCS 90/15)

7 Sec. 15. Enforceability of a covenant not to compete or a
8 covenant not to solicit.

9 (a) A covenant not to compete or a covenant not to solicit
10 is illegal and void regardless of where and when the covenant
11 not to compete or a covenant not to solicit was entered into
12 ~~unless (1) the employee receives adequate consideration, (2)~~
13 ~~the covenant is ancillary to a valid employment relationship,~~
14 ~~(3) the covenant is no greater than is required for the~~
15 ~~protection of a legitimate business interest of the employer,~~
16 ~~(4) the covenant does not impose undue hardship on the~~
17 ~~employee, and (5) the covenant is not injurious to the public.~~

18 (b) An employer or former employer shall not attempt to
19 enforce a contract that is void and unenforceable under this
20 Act regardless of whether the contract was signed and the
21 employment was maintained outside of this State.

22 (Source: P.A. 102-358, eff. 1-1-22.)

23 (820 ILCS 90/17 new)

24 Sec. 17. Notice to employees and former employees. On or

1 before April 1, 2025, an employer who entered into a covenant
2 not to compete or a covenant not to solicit with an employee,
3 or a former employees who was employed after January 1 2023,
4 shall notify the employee or the former employee that the
5 covenant not to compete or the covenant not to solicit is void
6 and unenforceable. Notice made under this subsection shall be
7 in the form of a written individualized communication to the
8 employee or former employee and shall be delivered to the last
9 known address and the email address of the employee or former
10 employee.

11 (820 ILCS 90/7 rep.)

12 (820 ILCS 90/20 rep.)

13 (820 ILCS 90/35 rep.)

14 Section 10. The Illinois Freedom to Work Act is amended by
15 repealing Sections 7, 20, and 35.