

1 AN ACT concerning business.

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 and 10 and by adding Sections 7, 15, 20,
6 25, 30, 35, and 97 as 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: ~~(1)~~ between
19 an employer and an a low wage employee that is entered into
20 after the effective date of this amendatory Act of the 102nd
21 General Assembly that restricts the ~~such low wage~~ employee
22 from performing:

23 (1) ~~(A)~~ any work for another employer for a

1 specified period of time;

2 (2) ~~(B)~~ any work in a specified geographical area;

3 or

4 (3) ~~(C)~~ work for another employer that is similar
5 to ~~such low wage~~ employee's work for the employer
6 included as a party to the agreement, ~~and~~

7 ~~(2) that is entered into after the effective date of~~
8 ~~this Act.~~

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

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

1 agreements by which the employee agrees not to reapply for
2 employment to the same employer after termination of the
3 employee.

4 "Covenant not to solicit" means an agreement that is
5 entered into after the effective date of this amendatory Act
6 of the 102nd General Assembly between an employer and an
7 employee that (1) restricts the employee from soliciting for
8 employment the employer's employees or (2) restricts the
9 employee from soliciting, for the purpose of selling products
10 or services of any kind to, or from interfering with the
11 employer's relationships with, the employer's clients,
12 prospective clients, vendors, prospective vendors, suppliers,
13 prospective suppliers, or other business relationships.

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

24 "Employee" means any individual permitted to work by an
25 employer in an occupation.

26 "Employer" has the meaning given to such term in

1 subsection (c) of Section 3 of the Minimum Wage Law.
2 "Employer" does not include governmental or quasi-governmental
3 bodies.

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

18 ~~"Low wage employee" means an employee whose earnings do~~
19 ~~not exceed the greater of (1) the hourly rate equal to the~~
20 ~~minimum wage required by the applicable federal, State, or~~
21 ~~local minimum wage law or (2) \$13.00 per hour.~~

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

23 (820 ILCS 90/7 new)

24 Sec. 7. Legitimate business interest of the employer. In
25 determining the legitimate business interest of the employer,

1 the totality of the facts and circumstances of the individual
2 case shall be considered. Factors that may be considered in
3 this analysis include, but are not limited to, the employee's
4 exposure to the employer's customer relationships or other
5 employees, the near-permanence of customer relationships, the
6 employee's acquisition, use, or knowledge of confidential
7 information through the employee's employment, the time
8 restrictions, the place restrictions, and the scope of the
9 activity restrictions. No factor carries any more weight than
10 any other, but rather its importance will depend on the
11 specific facts and circumstances of the individual case. Such
12 factors are only non-conclusive aids in determining the
13 employer's legitimate business interest, which in turn is but
14 one component in the 3-prong rule of reason, grounded in the
15 totality of the circumstances. Each situation must be
16 determined on its own particular facts. Reasonableness is
17 gauged not just by some, but by all of the circumstances. The
18 same identical contract and restraint may be reasonable and
19 valid under one set of circumstances and unreasonable and
20 invalid under another set of circumstances.

21 (820 ILCS 90/10)

22 Sec. 10. Prohibiting covenants not to compete and
23 covenants not to solicit ~~for low wage employees.~~

24 (a) No employer shall enter into a covenant not to compete
25 with any employee unless the employee's actual or expected

1 annualized rate of earnings exceeds \$75,000 per year. This
2 amount shall increase to \$80,000 per year beginning on January
3 1, 2027, \$85,000 per year beginning on January 1, 2032, and
4 \$90,000 per year beginning on January 1, 2037. A covenant not
5 to compete entered into in violation of this subsection is
6 void and unenforceable. No employer shall enter into a
7 covenant not to compete with any low wage employee of the
8 employer.

9 (b) No employer shall enter into a covenant not to solicit
10 with any employee unless the employee's actual or expected
11 annualized rate of earnings exceeds \$45,000 per year. This
12 amount shall increase to \$47,500 per year beginning on January
13 1, 2027, \$50,000 per year beginning on January 1, 2032, and
14 \$52,500 per year beginning on January 1, 2037. A covenant not
15 to solicit entered into in violation of this subsection is
16 void and unenforceable. A covenant not to compete entered into
17 between an employer and a low wage employee is illegal and
18 void.

19 (c) No employer shall enter into a covenant not to compete
20 or a covenant not to solicit with any employee who an employer
21 terminates or furloughs or lays off as the result of business
22 circumstances or governmental orders related to the COVID-19
23 pandemic or under circumstances that are similar to the
24 COVID-19 pandemic, unless enforcement of the covenant not to
25 compete includes compensation equivalent to the employee's
26 base salary at the time of termination for the period of

1 enforcement minus compensation earned through subsequent
2 employment during the period of enforcement. A covenant not to
3 compete or a covenant not to solicit entered into in violation
4 of this subsection is void and unenforceable.

5 (d) A covenant not to compete is void and illegal with
6 respect to individuals covered by a collective bargaining
7 agreement under the Illinois Public Labor Relations Act or the
8 Illinois Educational Labor Relations Act and individuals
9 employed in construction. This subsection (d) does not apply
10 to construction employees who primarily perform management,
11 engineering or architectural, design, or sales functions for
12 the employer or who are shareholders, partners, or owners in
13 any capacity of the employer.

14 (Source: P.A. 99-860, eff. 1-1-17.)

15 (820 ILCS 90/15 new)

16 Sec. 15. Enforceability of a covenant not to compete or a
17 covenant not to solicit. A covenant not to compete or a
18 covenant not to solicit is illegal and void unless (1) the
19 employee receives adequate consideration, (2) the covenant is
20 ancillary to a valid employment relationship, (3) the covenant
21 is no greater than is required for the protection of a
22 legitimate business interest of the employer, (4) the covenant
23 does not impose undue hardship on the employee, and (5) the
24 covenant is not injurious to the public.

1 (820 ILCS 90/20 new)

2 Sec. 20. Ensuring employees are informed about their
3 obligations. A covenant not to compete or a covenant not to
4 solicit is illegal and void unless (1) the employer advises
5 the employee in writing to consult with an attorney before
6 entering into the covenant and (2) the employer provides the
7 employee with a copy of the covenant at least 14 calendar days
8 before the commencement of the employee's employment or the
9 employer provides the employee with at least 14 calendar days
10 to review the covenant. An employer is in compliance with this
11 Section even if the employee voluntarily elects to sign the
12 covenant before the expiration of the 14-day period.

13 (820 ILCS 90/25 new)

14 Sec. 25. Remedies. In addition to any remedies available
15 under any agreement between an employer and an employee or
16 under any other statute, in a civil action or arbitration
17 filed by an employer (including, but not limited to, a
18 complaint or counterclaim), if an employee prevails on a claim
19 to enforce a covenant not to compete or a covenant not to
20 solicit, the employee shall recover from the employer all
21 costs and all reasonable attorney's fees regarding such claim
22 to enforce a covenant not to compete or a covenant not to
23 solicit, and the court or arbitrator may award appropriate
24 relief.

1 (820 ILCS 90/30 new)

2 Sec. 30. Attorney General enforcement.

3 (a) Whenever the Attorney General has reasonable cause to
4 believe that any person or entity is engaged in a pattern and
5 practice prohibited by this Act, the Attorney General may
6 initiate or intervene in a civil action in the name of the
7 People of the State in any appropriate court to obtain
8 appropriate relief.

9 (b) Before initiating an action, the Attorney General may
10 conduct an investigation and may: (1) require an individual or
11 entity to file a statement or report in writing under oath or
12 otherwise, as to all information the Attorney General may
13 consider necessary; (2) examine under oath any person alleged
14 to have participated in or with knowledge of the alleged
15 violation; or (3) issue subpoenas or conduct hearings in aid
16 of any investigation.

17 (c) Service by the Attorney General of any notice
18 requiring a person or entity to file a statement or report, or
19 of a subpoena upon any person or entity, shall be made:

20 (1) personally by delivery of a duly executed copy
21 thereof to the person to be served or, if a person is not a
22 natural person, in the manner provided in the Code of
23 Civil Procedure when a complaint is filed; or

24 (2) by mailing by certified mail a duly executed copy
25 thereof to the person to be served at his or her last known
26 abode or principal place of business within this State or,

1 if a person is not a natural person, in the manner provided
2 in the Code of Civil Procedure when a complaint is filed.

3 The Attorney General may compel compliance with
4 investigative demands under this Section through an order by
5 any court of competent jurisdiction.

6 (d) (1) In an action brought under this Act, the Attorney
7 General may obtain, as a remedy, monetary damages to the
8 State, restitution, and equitable relief, including any
9 permanent or preliminary injunction, temporary restraining
10 order, or other order, including an order enjoining the
11 defendant from engaging in a violation, or order any action as
12 may be appropriate. In addition, the Attorney General may
13 request and the court may impose a civil penalty not to exceed
14 \$5,000 for each violation or \$10,000 for each repeat violation
15 within a 5-year period. For purposes of this Section, each
16 violation of this Act for each person who was subject to an
17 agreement in violation of this Act shall constitute a separate
18 and distinct violation.

19 (2) A civil penalty imposed under this subsection shall be
20 deposited into the Attorney General Court Ordered and
21 Voluntary Compliance Payment Projects Fund. Moneys in the Fund
22 shall be used, subject to appropriation, for the performance
23 of any function pertaining to the exercise of the duties of the
24 Attorney General, including, but not limited to, enforcement
25 of any law of this State and conducting public education
26 programs; however, any moneys in the Fund that are required by

1 the court or by an agreement to be used for a particular
2 purpose shall be used for that purpose.

3 (820 ILCS 90/35 new)

4 Sec. 35. Reformation.

5 (a) Extensive judicial reformation of a covenant not to
6 compete or a covenant not to solicit may be against the public
7 policy of this State and a court may refrain from wholly
8 rewriting contracts.

9 (b) In some circumstances, a court may, in its discretion,
10 choose to reform or sever provisions of a covenant not to
11 compete or a covenant not to solicit rather than hold such
12 covenant unenforceable. Factors which may be considered when
13 deciding whether such reformation is appropriate include the
14 fairness of the restraints as originally written, whether the
15 original restriction reflects a good-faith effort to protect a
16 legitimate business interest of the employer, the extent of
17 such reformation, and whether the parties included a clause
18 authorizing such modifications in their agreement.

19 (820 ILCS 90/97 new)

20 Sec. 97. Severability. The provisions of this Act are
21 severable under Section 1.31 of the Statute on Statutes.

22 Section 99. Effective date. This Act takes effect January
23 1, 2022.