

SB3163



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB3163

Introduced 2/19/2016, by Sen. Patricia Van Pelt

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Freedom to Work Act. Provides that no employer shall enter into a covenant not to compete with any low-wage employee of the employer. Sets forth provisions providing that the Director of the Department of Labor shall adjust for inflation. Provides that in order for an employer to require an employee to enter into a covenant not to compete, the employer shall, prior to the employment of such employee and at the beginning of the process for hiring such employee, have disclosed to such employee the requirement for entering into such covenant. Sets forth provisions providing how the Director shall receive, investigate, attempt to resolve, and enforce complaints. Effective immediately.

LRB099 12727 SXM 36512 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 1. Short title. This Act may be cited as the
5 Illinois Freedom to Work Act.

6 Section 5. Definitions. In this Act:

7 "Covenant not to compete" means an agreement:

8 (1) between an employer and employee that restricts
9 such employee from performing:

10 (A) any work for another employer for a specified
11 period of time;

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

13 (C) work for another employer that is similar to
14 such employee's work for the employer included as a
15 party to the agreement; and

16 (2) that is entered into after the effective date of
17 this Act.

18 "Director" means the Director of the Department of Labor.

19 "Employee" includes any individual permitted to work by an
20 employer in an industry, trade, business, or class of work.

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

23 "Livable hourly rate" means:

1 (1) for the fiscal year of the date of enactment of
2 this Act, the greater of:

3 (A) \$15 per hour; or

4 (B) the hourly rate equal to the minimum wage
5 required by the applicable federal, State, or local
6 minimum wage law; and

7 (2) for each succeeding fiscal year, the greater of:

8 (A) the adjusted amount described in paragraph (1)
9 of subsection (d) of Section 10 of this Act; or

10 (B) the hourly rate equal to the minimum wage
11 required by the applicable federal, State, or local
12 minimum wage law.

13 "Low-wage employee":

14 (1) means an employee who, excluding any overtime
15 compensation required under any applicable federal or
16 State law, receives from the applicable employer:

17 (A) an hourly compensation that is less than the
18 livable hourly rate; or

19 (B) an annual compensation that is equal to or less
20 than:

21 (i) for the fiscal year of the date of
22 enactment of this Act, \$36,375 per year; and

23 (ii) for each succeeding fiscal year, the
24 adjusted amount described in paragraph (1) of
25 subsection (d) of Section 10 of this Act; and

26 (2) does not include any salaried employee who receives

1 from the applicable employer compensation that, for 2
2 consecutive months, is greater than:

3 (A) for the fiscal year of the date of enactment of
4 this Act, \$5,000; and

5 (B) for each succeeding fiscal year, the adjusted
6 amount described in paragraph (1) of subsection (d) of
7 Section 10 of this Act.

8 Section 10. Prohibiting covenants not to compete for
9 low-wage employees.

10 (a) No employer shall enter into a covenant not to compete
11 with any low-wage employee of the employer.

12 (b) A covenant not to compete entered into between an
13 employer and a low-wage employee is illegal and void.

14 (c) An employer who employs any low-wage employee shall
15 post notice of the provisions of this Act in a conspicuous
16 place on the premises of such employer.

17 (d) Inflation adjustment.

18 (1) For each fiscal year after the fiscal year of the
19 date of enactment of this Act, the Director shall adjust
20 each amount in effect under Section 5 of this Act for
21 inflation by increasing each such amount, as in effect for
22 the preceding fiscal year, by the annual percentage
23 increase in the Consumer Price Index for Urban Wage Earners
24 and Clerical Workers (United States city average, all
25 items, not seasonally adjusted), or its successor

1 publication, as determined by the United States Department
2 of Labor Bureau of Labor Statistics.

3 (2) The amounts adjusted under paragraph (1) of this
4 subsection (d) shall be rounded to the nearest multiple of
5 \$0.05.

6 Section 15. Disclosure requirement for covenants not to
7 compete. In order for an employer to require an employee to
8 enter into a covenant not to compete, the employer shall, prior
9 to the employment of such employee and at the beginning of the
10 process for hiring such employee, have disclosed to such
11 employee the requirement for entering into such covenant.

12 Section 20. Director's duties. The Director or his
13 authorized representatives have the authority to:

14 (a) Investigate and gather data regarding hiring,
15 covenants not to compete, and other conditions and practices of
16 employment in any industry subject to this Act, and may enter
17 and inspect such places and such records (and make such
18 transcriptions thereof) at reasonable times during regular
19 business hours, not including lunch time at a restaurant,
20 question such employees, and investigate such facts,
21 conditions, practices or matters as he may deem necessary or
22 appropriate to determine whether any person has violated any
23 provision of this Act, or which may aid in the enforcement of
24 this Act.

1 (b) Require from any employer full and correct statements
2 and reports in writing, including sworn statements, at such
3 times as the Director may deem necessary, of hiring, covenants
4 not to compete, names, addresses, and other information
5 pertaining to his employees as he may deem necessary for the
6 enforcement of this Act.

7 (c) Require by subpoena the attendance and testimony of
8 witnesses and the production of all books, records, and other
9 evidence relative to a matter under investigation or hearing.
10 The subpoena shall be signed and issued by the Director or his
11 or her authorized representative. If a person fails to comply
12 with any subpoena lawfully issued under this Section or a
13 witness refuses to produce evidence or testify to any matter
14 regarding which he or she may be lawfully interrogated, the
15 court may, upon application of the Director or his or her
16 authorized representative, compel obedience by proceedings for
17 contempt.

18 Section 25. Employer duties. Every employer subject to any
19 provision of this Act or of any order issued under this Act
20 shall make and keep for a period of not less than 3 years, true
21 and accurate records of the name, address and occupation of
22 each of his or her employees, all interviews and meetings
23 pertaining to the hiring process, including, but not limited
24 to, discussions of covenants not to compete, and such other
25 information and make such reports therefrom to the Director as

1 the Director may by regulation prescribe as necessary or
2 appropriate for the enforcement of the provisions of this Act
3 or of the regulations thereunder. Such records shall be open
4 for inspection or transcription by the Director or his
5 authorized representative at any reasonable time as limited by
6 paragraph (a) of Section 20 of this Act. Every employer shall
7 furnish to the Director or his authorized representative on
8 demand a sworn statement of such records and information upon
9 forms prescribed or approved by the Director.

10 Section 30. Employer records. Every employer subject to any
11 provision of this Act or of any regulations issued under this
12 Act shall keep a summary of this Act approved by the Director,
13 and copies of any applicable regulations issued under this Act
14 or a summary of such regulations, posted in a conspicuous and
15 accessible place in or about the premises wherever any person
16 subject to this Act is employed. Employers shall be furnished
17 copies of such summaries and regulations by the State on
18 request without charge.

19 Section 35. Administrative rules.

20 (a) The Director shall make and revise rules, including
21 definitions of terms, as he deems appropriate to carry out the
22 purposes of this Act, to prevent the circumvention or evasion
23 thereof, and to safeguard the requirements governing covenants
24 not to compete established by the Act.

1 (b) The Department may adopt those rules necessary to carry
2 out the purposes of this Act, according to the provisions of
3 the Illinois Administrative Procedure Act.

4 (c) The commencement of proceedings by any person aggrieved
5 by a rule adopted under this Act does not, unless specifically
6 ordered by the Court, operate as a stay of that rule against
7 other persons.

8 Section 40. Violations; Department duties.

9 (a) Any employer or his agent, or the officer or agent of
10 any private employer who:

11 (1) hinders or delays the Director or his authorized
12 representative in the performance of his duties in the
13 enforcement of this Act; or

14 (2) refuses to admit the Director or his authorized
15 representative to any place of employment; or

16 (3) fails to keep the records required under this Act
17 or to furnish such records required or any information to
18 be furnished under this Act to the Director or his
19 authorized representative upon request; or

20 (4) fails to make and preserve any records as required
21 hereunder; or

22 (5) falsifies any such record; or

23 (6) refuses to make such records available to the
24 Director or his authorized representative; or

25 (7) refuses to furnish a sworn statement of such

1 records or any other information required for the proper
2 enforcement of this Act; or

3 (8) fails to post a summary of this Act or a copy of
4 any applicable regulation as required by Section 30 of this
5 Act; shall be guilty of a Class B misdemeanor; and each day
6 of such failure to keep the records required under this Act
7 or to furnish such records or information to the Director
8 or his authorized representative or to fail to post
9 information as required herein constitutes a separate
10 offense.

11 (b) Any employer or his agent, or the officer or agent of
12 any private employer, who discharges or in any other manner
13 discriminates against any employee because that employee has
14 made a complaint to his employer, or to the Director or his
15 authorized representative, this Act, or because that employee
16 has caused to be instituted or is about to cause to be
17 instituted any proceeding under or related to this Act, or
18 because that employee has testified or is about to testify in
19 an investigation or proceeding under this Act, is guilty of a
20 Class B misdemeanor.

21 (c) It is the duty of the Department to inquire diligently
22 for any violations of this Act, and to institute the action for
23 penalties herein provided, and to enforce generally the
24 provisions of this Act.

25 Section 45. Civil fine.

1 (1) The Director shall impose a civil fine:

2 (A) with respect to any employer who violates
3 subsection (a) of Section 10 or Section 15 of this Act,
4 with an amount not to exceed \$5,000 for each employee
5 who was the subject of such violation; and

6 (B) with respect to any employer who violates
7 subsection (c) of Section 10, with an amount not to
8 exceed \$5,000.

9 (2) In determining the amount of any civil fine under
10 this Section, the Director shall consider the
11 appropriateness of the fine to the size of the employer
12 subject to such fine and the gravity of the applicable
13 violation.

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.