

2025 -- S 0302 SUBSTITUTE A AS AMENDED

LC000411/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RHODE ISLAND
NONCOMPETITION AGREEMENT ACT

Introduced By: Senator Matthew L. LaMountain

Date Introduced: February 13, 2025

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-59-2 and 28-59-3 of the General Laws in Chapter 28-59 entitled
2 "Rhode Island Noncompetition Agreement Act" are hereby amended to read as follows:

3 **28-59-2. Definitions.**

4 As used in this chapter:

5 (1) "Annualized earnings" means the compensation, including annualized salary, expected
6 bonuses, expected commissions, or any other form of taxable compensation, reflected or that is
7 expected to be reflected as wages, tips, and other compensation on the employee's IRS Form W-2
8 plus any elective deferrals not reflected as wages, tips, and other compensation on the employee's
9 IRS Form W-2, such as, without limitation, employee contributions to a 401 (k) plan, a 403(b) plan,
10 a flexible spending account, or a health savings account, or commuter benefit-related deductions.

11 ~~(1)~~(2) "Business entity" means any person as defined in § 43-3-6 and includes a
12 corporation, business trust, estate trust, partnership, association, joint venture, government,
13 governmental subdivision or agency, or any other legal or commercial entity.

14 ~~(2) "Earnings" means wages or compensation paid to an employee in the first forty (40)~~
15 ~~hours of work in a given week, not inclusive of hours paid at an overtime, Sunday, or holiday rate.~~

16 (3) "Employee" means an individual who works for hire, including an individual employed
17 in a supervisory, managerial, or confidential position, but shall not include an independent
18 contractor.

1 (4) “Employer” means any person, business entity, partnership, individual proprietorship,
2 joint venture, firm, company, or other similar legal entity who or that employs one or more
3 employees, and shall include the state and its instrumentalities and political subdivisions, public
4 corporations, and charitable organizations.

5 (5) “Forfeiture agreement” means an agreement that imposes adverse financial
6 consequences on a former employee as a result of the termination of an employment relationship,
7 regardless of whether the employee engaged in competitive activities, following cessation of the
8 employment relationship. Forfeiture agreements do not include forfeiture for competition
9 agreements.

10 (6) “Forfeiture for competition agreement” means an agreement that by its terms or through
11 the manner in which it is enforced, imposes adverse financial consequences on a former employee
12 as a result of the termination of an employment relationship if the employee engages in competitive
13 activities.

14 (7) ~~“Low wage employee” means an employee whose average annual earnings, as defined~~
15 ~~in subsection (2), are not more than two hundred fifty percent (250%) of the federal poverty level~~
16 ~~for individuals as established by the United States Department of Health and Human Services~~
17 ~~federal poverty guidelines.~~

18 (8) “Noncompetition agreement” means an agreement not to compete with a specific
19 business or entity to include, but not be limited to, an agreement prohibited by the provisions of §
20 28-59-3(a) between an employer and an employee, or otherwise arising out of an existing or
21 anticipated employment relationship, under which the employee or expected employee agrees that
22 he or she will not engage in certain specified activities competitive with his or her employer after
23 the employment relationship has ended. Noncompetition agreements include forfeiture for
24 competition agreements, but do not include:

25 (i) Covenants not to solicit or hire employees of the employer;

26 (ii) ~~Covenants not to solicit or transact business with customers, clients, or vendors of the~~
27 ~~employer;~~

28 (iii) Noncompetition agreements made in connection with the sale of a business entity or
29 all or substantially all of the operating assets of a business entity or partnership, or otherwise
30 disposing of the ownership interest of a business entity or partnership, or division or subsidiary of
31 any of the foregoing, when the party restricted by the noncompetition agreement is a significant
32 owner of, or member or partner in, the business entity who will receive significant consideration or
33 benefit from the sale or disposal;

34 (iv) Noncompetition agreements originating outside of an employment relationship;

- 1 (v) Forfeiture agreements;
- 2 (vi) Nondisclosure or confidentiality agreements;
- 3 (vii) Invention assignment agreements;
- 4 (viii) ~~Noncompetition agreements made in connection with the cessation of or separation~~
- 5 ~~from employment if the employee is expressly granted seven (7) business days to rescind~~
- 6 ~~acceptance; or~~
- 7 (ix) Agreements by which an employee agrees to not reapply for employment to the same
- 8 employer after termination of the employee;
- 9 (x) Noncompetition agreements made by financial institutions, as defined by the Gramm-
- 10 Leach-Bliley Act, engaged in insurance activities and financial institutions subject to Title V of the
- 11 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.; or
- 12 (xi) Noncompetition agreements made by financial institutions subject to Title V of the
- 13 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.
- 14 (9) “Trade secret” means information as defined in § 6-41-1.
- 15 **28-59-3. Enforceability.**
- 16 (a) ~~A~~ Except as provided in this section, a noncompetition agreement shall not be
- 17 enforceable against ~~the following types of workers:~~ an employee.
- 18 ~~(1) An employee who is classified as nonexempt under the Fair Labor Standards Act, 29~~
- 19 ~~U.S.C. §§ 201-219;~~
- 20 ~~(2) Undergraduate or graduate students who participate in an internship or otherwise enter~~
- 21 ~~a short-term employment relationship with an employer, whether paid or unpaid, while enrolled at~~
- 22 ~~an educational institution;~~
- 23 ~~(3) Employees age eighteen (18) or younger; or~~
- 24 ~~(4) A low-wage employee.~~
- 25 (b) A noncompetition agreement may be enforceable if reasonable in scope, time-frame
- 26 and application and the noncompetition agreement is entered pursuant to an agreement to sell a
- 27 business entity or an equity interest in a business.
- 28 ~~(b)~~(c) This section does not render void or unenforceable the remainder of a contract or
- 29 agreement containing the unenforceable noncompetition agreement, nor does it preclude the
- 30 imposition of a noncompetition restriction by a court, whether through preliminary or permanent
- 31 injunctive relief or otherwise, as a remedy for a breach of another agreement or of a statutory or
- 32 common law duty.
- 33 ~~(c)~~(d) Nothing in this section shall preclude an employer from entering into an agreement
- 34 with an employee not to share any information, including after the employee is no longer employed

1 by the employer, regarding the employer or the employment that is a trade secret, customer lists,
2 including the names, addresses, identities of customers, or future business plans.

3 (e) Notwithstanding other provisions to the contrary, a noncompetition agreement is void
4 and unenforceable against an employee unless the employee's annualized earnings exceed one
5 hundred twenty-five thousand dollars (\$125,000).

6 (f) Nothing in this chapter shall be construed to authorize, permit or otherwise enable the
7 enforcement of a noncompete clause in any profession, occupation, or industry where such clauses
8 are otherwise prohibited by existing state or federal law.

9 SECTION 2. Chapter 28-59 of the General Laws entitled "Rhode Island Noncompetition
10 Agreement Act" is hereby amended by adding thereto the following sections:

11 **28-59-4. Civil action by employer.**

12 An employer may bring a civil action against any employee who, pursuant to an agreement
13 described in § 28-59-3(d), violates that agreement and discloses or wrongfully utilizes trade secrets,
14 and the successful employer may be awarded injunctive relief, compensatory damages, punitive
15 damages, attorneys' fees and costs.

16 **28-59-5. Severability.**

17 If any provision of a chapter or the application thereof to any person or circumstances is
18 held invalid, such invalidity shall not affect other provisions or applications of the chapter which
19 can be given effect without the invalid provision or application, and to this end the provisions of
20 this chapter are declared to be severable.

21 SECTION 3. This act shall take effect on January 1, 2026.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- RHODE ISLAND
NONCOMPETITION AGREEMENT ACT

1 This act would prohibit noncompetition agreements except for noncompetition agreements
2 between a seller and buyer of a business. This act would also create a civil action for an employer
3 for the violation of an agreement by an employee regarding disclosure or wrongful utilization of
4 trade secrets.

5 This act would take effect on January 1, 2026.

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