

2019 -- H 6019 SUBSTITUTE A

LC002416/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

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

Introduced By: Representative Christopher R. Blazewski

Date Introduced: April 24, 2019

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 58

4 RHODE ISLAND NONCOMPETITION AGREEMENT ACT

5 **28-58-1. Short title.**

6 This chapter shall be known and may be cited as the "Rhode Island Noncompetition
7 Agreement Act."

8 **28-58-2. Definitions.**

9 As used in this chapter:

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

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

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

1 (4) "Employer" means any person, business entity, partnership, individual proprietorship,
2 joint venture, firm, company or other similar legal entity that employs one or more employees,
3 and shall include the state and its instrumentalities and political subdivisions, public corporations,
4 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
11 through the manner in which it is enforced, imposes adverse financial consequences on a former
12 employee as a result of the termination of an employment relationship if the employee engages in
13 competitive activities.

14 (7) "Low-wage employee" means an employee whose average annual earnings, as
15 defined in § 28-58-2(2), are not more than two hundred fifty percent (250%) of the federal
16 poverty level for individuals as established by the United States Department of Health and
17 Human Services federal poverty guidelines.

18 (8) "Noncompetition agreement" means an agreement between an employer and an
19 employee, or otherwise arising out of an existing or anticipated employment relationship, under
20 which the employee or expected employee agrees that he or she will not engage in certain
21 specified activities competitive with his or her employer, after the employment relationship has
22 ended. Noncompetition agreements include forfeiture for competition agreements, but do not
23 include:

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

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

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

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

34 (v) Forfeiture agreements;

- 1 (vi) Nondisclosure or confidentiality agreements;
2 (vii) Invention assignment agreements;
3 (viii) Noncompetition agreements made in connection with the cessation of or separation
4 from employment if the employee is expressly granted seven (7) business days to rescind
5 acceptance; or
6 (ix) Agreements by which an employee agrees to not reapply for employment to the same
7 employer after termination of the employee.

8 (9) "Trade secret" means information as defined in § 6-41-1.

9 **28-58-3. Enforceability.**

10 (a) A noncompetition agreement shall not be enforceable against the following types of
11 workers:

12 (1) An employee who is classified as nonexempt under the Fair Labor Standards Act, 29
13 U.S.C. 201-219;

14 (2) Undergraduate or graduate students that participate in an internship or otherwise enter
15 a short-term employment relationship with an employer, whether paid or unpaid, while enrolled
16 at an educational institution;

17 (3) Employees age eighteen (18) or younger; or

18 (4) A low-wage employee.

19 (b) This section does not render void or unenforceable the remainder of a contract or
20 agreement containing the unenforceable noncompetition agreement, nor does it preclude the
21 imposition of a noncompetition restriction by a court, whether through preliminary or permanent
22 injunctive relief or otherwise, as a remedy for a breach of another agreement or of a statutory or
23 common law duty.

24 (c) Nothing in this section shall preclude an employer from entering into an agreement
25 with an employee not to share any information, including after the employee is no longer
26 employed by the employer, regarding the employer or the employment that is a trade secret.

27 SECTION 2. This act shall take effect six (6) months after passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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

1 This act would create a comprehensive statutory scheme to address all aspects of
2 noncompetition agreements.

3 This act would take effect six (6) months after passage.

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