HOUSE BILL

346

AN ACT relative to noncompete agreements.

SPONSORS: Rep. Meuse, Rock. 29; Rep. Somssich, Rock. 27; Sen. Watters, Dist 4

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill governs noncompete agreements between employers and employees.

Explanation: Matter added to current law appears in bold italics.
Matter removed from current law appears in brackets and struckthrough.
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to noncompete agreements.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Protective Legislation; Noncompete Agreements. Amend RSA 275 by inserting after section 70 the following new section:

275:70-a Noncompete Agreements.

I. In this section:
(a) "Employer" shall have the same meaning as in RSA 279:1, XI.
(b) "Low-wage employee" means an employee who earns:
   (1) $15.00 per hour or less; or
   (2) The hourly rate equal to the minimum wage required by the applicable federal minimum wage law or less.
(c) "Noncompete agreement" means an agreement between an employer and an employee that restricts an employee from performing:
   (1) Work for another employer for a specified period of time;
   (2) Work in a specified geographical area; or
   (3) Work for another employer that is similar to the employee's work for the employer who is a party to the agreement.

II. No employer shall enter into a noncompete agreement with a low-wage employee. A noncompete agreement between an employer and a low-wage employee shall be void and unenforceable.

III. A noncompete agreement entered into between an employer and an employee who is not a low-wage employee may be enforceable only if all of the following conditions are met:
(a) The agreement shall be in writing and signed by the employee and the employer.
(b) Any amendments or additions to the agreement shall be signed by the employee and the employer. If either the employer or the employee do not sign an amended agreement, the existing agreement shall remain in force. An employer may provide additional compensation to an employee as an incentive to sign an amended agreement. If an employee does not agree to sign an amended agreement, no action shall be taken by the employer that negatively affects the employee’s employment status or total compensation. For the purpose of this paragraph, "total compensation" means base pay, bonuses, other forms of incentive compensation, and benefits.
(c) The agreement shall specify that the employee has the right to counsel before signing.
(d) The agreement shall not exceed 6 months in length, shall not preclude the employee
from seeking employment in the employee’s chosen field or industry, and shall not preclude the
employee from seeking work within a specified geographic area.

(e) The agreement shall include a provision which would require the employer to
compensate the former employee for the duration of the noncompete period at a level equal to or
greater than 50 percent of the employee’s highest prorated annual salary over the last 2 years of
employment.

(f) If the former employee accepts a position from another employer which does not
violate the terms of the noncompete agreement during the period when the agreement is in force,
the former employee shall notify the former employer of their start date in the new organization.
The former employer may then cease compensation under the terms of the noncompete agreement
effective on the former employee's start date in their new position.

IV. Any noncompete agreement previously entered into between an employer and an
employee shall be void and unenforceable on or after the effective date of this section unless the
employee or former employee and the employer agree in writing either:

(a) To amend the noncompete agreement so it is in full compliance with the
requirements of paragraphs III and IV; or

(b) To allow the prior agreement to remain in force.

V. No employer shall terminate severance payments or other forms of pre-negotiated post-
employment compensation if a noncompete agreement entered into prior to the effective date of this
section is not brought into compliance by the effective date of this section.

2 Effective Date. This act shall take effect January 1, 2020.