

Senate Study Bill 1031 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON LABOR AND BUSINESS
RELATIONS BILL BY
CHAIRPERSON WHITING)

A BILL FOR

1 An Act concerning the circumstances under which employers
2 can enter into noncompete agreements with employees and
3 including applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 94.1 Definitions.

2 For purposes of this chapter, unless the context otherwise
3 requires:

4 1. "*Bona fide advancement*" means an increase or enhancement
5 in job duties or responsibilities accompanied by an increase or
6 enhancement of an employee's pay or benefits and a modification
7 of the employee's job title.

8 2. "*Confidentiality agreement*" means an agreement between
9 an employer and employee by which an employee agrees not to
10 disclose specified information designated by the employer as
11 confidential.

12 3. "*Earnings*" means the compensation reflected on box one
13 of the employee's United States internal revenue service form
14 W-2 that is paid to an employee over the prior year, or the
15 portion thereof for which the employee was employed, annualized
16 and calculated as of the earlier of the date enforcement of the
17 noncompete agreement is sought by the employer or the date of
18 the employee's separation from employment.

19 4. "*Employee*" means a natural person who is employed in this
20 state for wages by an employer.

21 5. "*Employer*" means a person, as defined in chapter 4, who
22 in this state employs for wages a natural person.

23 6. "*Franchisee*" and "*franchisor*" mean the same as defined
24 in section 523H.1.

25 7. "*Noncompete agreement*" includes every written or oral
26 covenant, agreement, or contract by which an employee is
27 prohibited or restrained from engaging in a lawful profession,
28 trade, or business of any kind. "*Noncompete agreement*" does not
29 include any of the following:

30 a. A nonsolicitation agreement.

31 b. A confidentiality agreement.

32 c. An agreement prohibiting use or disclosure of trade
33 secrets or inventions.

34 8. "*Nonsolicitation agreement*" means an agreement between
35 an employer and employee that prohibits solicitation by

1 an employee, upon termination of employment, of any of the
2 following:

3 *a.* An employee of the employer to leave employment by the
4 employer.

5 *b.* A customer of the employer to cease or reduce the extent
6 to which the customer does business with the employer.

7 Sec. 2. NEW SECTION. **94.2 Limitations on noncompete**
8 **agreements.**

9 1. A noncompete agreement entered into between an employer
10 and an employee on or after the effective date of this Act
11 is void and unenforceable against an employee in all of the
12 following circumstances:

13 *a.* When receiving an offer of employment from an employer is
14 contingent upon entering into a noncompete agreement, unless,
15 before the employer offers employment to the employee, the
16 employer does all of the following:

17 (1) Notifies the employee in writing that obtaining
18 employment is contingent on signing a noncompete agreement.

19 (2) Gives the employee a written copy of the noncompete
20 agreement to be signed by both employee and employer.

21 *b.* When receiving an offer of a bona fide advancement from
22 an employer is contingent upon entering into a noncompete
23 agreement, unless, before the employer offers the bona fide
24 advancement to the employee, the employer does all of the
25 following:

26 (1) Notifies the employee in writing that the advancement
27 was contingent on signing a noncompete agreement.

28 (2) Gives the employee a written copy of the noncompete
29 agreement to be signed by both employee and employer.

30 *c.* When entering into a noncompete agreement is required
31 in order to continue employment by the employer after a
32 substantial change in circumstances of the employer including
33 but not limited to the sale of all or substantially all of the
34 employer's assets, the employer's acceptance of significant
35 financing from a third party, or the employer's entering into a

1 partnership, joint venture, or other such business arrangement
2 with another person, unless, before the substantial change
3 in circumstances is completed, the employer does all of the
4 following:

5 (1) Notifies the employee in writing that continued
6 employment is contingent on signing a noncompete agreement.

7 (2) Gives the employee a written copy of the noncompete
8 agreement to be signed by both employee and employer.

9 *d.* If the employee's earnings from the employer, when
10 annualized, do not exceed forty-one thousand six hundred
11 dollars per year.

12 *e.* If the employer terminates the employment of the
13 employee, but the termination is not for good cause.

14 *f.* If the agreement exceeds eighteen months in duration.

15 *g.* If the employee is participating in a program registered
16 with the United States department of labor, office of
17 apprenticeship.

18 *h.* If the employee is an undergraduate or graduate student
19 working as an intern or in other short-term employment.

20 *i.* If the employee is under eighteen years of age.

21 **Sec. 3. NEW SECTION. 94.3 Limitations on franchises.**

22 1. A franchisor shall not restrict, restrain, or prohibit in
23 any way a franchisee from soliciting or hiring any employee of
24 a franchisee of the same franchisor.

25 2. A franchisor shall not restrict, restrain, or prohibit
26 in any way a franchisee from soliciting or hiring any employee
27 of the franchisor.

28 **Sec. 4. APPLICABILITY.** This Act applies to noncompete
29 agreements entered into between an employer and an employee on
30 or after the effective date of this Act.

31 **EXPLANATION**

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill relates to the circumstances under which employers
35 can enter into noncompete agreements with employees.

1 The bill defines a noncompete agreement to include every
2 written or oral covenant, agreement, or contract by which an
3 employee is prohibited or restrained from engaging in a lawful
4 profession, trade, or business of any kind. The bill excludes
5 a nonsolicitation agreement, confidentiality agreement, or
6 agreement prohibiting use or disclosure of trade secrets or
7 inventions from this definition.

8 The bill provides that a noncompete agreement entered
9 into between an employer and an employee on or after the
10 effective date of the bill is void and unenforceable against
11 an employee in certain specified circumstances relating to
12 contingent offers of employment, contingent offers of bona fide
13 advancement, entering into a noncompete agreement in order
14 to continue employment by the employer after a substantial
15 change in circumstances of the employer, an employee's earnings
16 not exceeding \$41,600 per year, termination of employment if
17 not for good cause, the noncompete agreement exceeding 18
18 months in duration, the employee participating in a program
19 registered with the United States department of labor, office
20 of apprenticeship, the employee being an undergraduate or
21 graduate student working as an intern or in other short-term
22 employment, or the employee being under 18 years of age.

23 The bill prohibits a franchisor from restricting,
24 restraining, or prohibiting in any way a franchisee from
25 soliciting or hiring any employee of a franchisee of the same
26 franchisor. The bill prohibits a franchisor from restricting,
27 restraining, or prohibiting in any way a franchisee from
28 soliciting or hiring any employee of the franchisor.

29 The bill applies to noncompete agreements entered into
30 between an employer and an employee on or after the effective
31 date of the bill.