

**Senate File 304 - Introduced**

SENATE FILE 304

BY BOULTON

**A BILL FOR**

1 An Act relating to prohibitions on noncompete covenants and  
2 including applicability provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 84A.5, subsection 4, Code 2023, is  
2 amended to read as follows:

3 4. The division of labor services is responsible for the  
4 administration of the laws of this state under [chapters 88,](#)  
5 [88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and](#)  
6 [94A, and 95,](#) and [sections 73A.21 and 85.68.](#) The executive head  
7 of the division is the labor commissioner, appointed pursuant  
8 to [section 91.2.](#)

9 Sec. 2. Section 91.4, subsection 2, Code 2023, is amended  
10 to read as follows:

11 2. The director of the department of workforce development,  
12 in consultation with the labor commissioner, shall, at the  
13 time provided by law, make an annual report to the governor  
14 setting forth in appropriate form the business and expense of  
15 the division of labor services for the preceding year, the  
16 number of remedial actions taken under [chapter 89A,](#) the number  
17 of disputes or violations processed by the division and the  
18 disposition of the disputes or violations, and other matters  
19 pertaining to the division which are of public interest,  
20 together with recommendations for change or amendment of the  
21 laws in [this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,](#)  
22 [90A, 91A, 91C, 91D, 91E, 92, and 94A, and 95,](#) and section  
23 [85.68,](#) and the recommendations, if any, shall be transmitted  
24 by the governor to the first general assembly in session after  
25 the report is filed.

26 Sec. 3. NEW SECTION. **95.1 Definitions.**

27 For purposes of this chapter:

28 1. "*Commissioner*" means the labor commissioner appointed  
29 pursuant to section 91.2

30 2. "*Covenant not to solicit*" means an agreement that is  
31 entered into between an employer and an employee that does any  
32 of the following:

33 a. Restricts the employee from soliciting for employment the  
34 employer's employees.

35 b. Restricts the employee from soliciting, for the

1 purpose of selling products or services of any kind to, or  
2 from interfering with the employer's relationships with, the  
3 employer's clients, prospective clients, vendors, prospective  
4 vendors, suppliers, prospective suppliers, or other business  
5 relationships.

6 3. *"Earnings"* means the compensation, including earned  
7 salary, earned bonuses, earned commissions, or any other form  
8 of taxable compensation, reflected or that is expected to  
9 be reflected as wages, tips, and other compensation on the  
10 employee's internal revenue service form W-2 plus any elective  
11 deferrals not reflected as wages, tips, and other compensation  
12 on the employee's internal revenue service form W-2, such as,  
13 without limitation, employee contributions to a 401(k) plan, a  
14 403(b) plan, a flexible spending account, or a health savings  
15 account, or commuter benefit-related deductions.

16 4. a. *"Noncompete covenant"* means an agreement between an  
17 employer and an employee that is entered into that restricts  
18 the employee from performing:

19 (1) Any work for another employer for a specific period of  
20 time.

21 (2) Any work in a specified geographical area.

22 (3) Work for another employer that is similar to any  
23 employee's work for the employer included as a party to the  
24 agreement.

25 b. *"Noncompete covenant"* also means an agreement between  
26 an employer and an employee that by its terms imposes adverse  
27 financial consequences on the former employee if the employee  
28 engages in competitive activities after the termination of the  
29 employee's employment with the employer.

30 c. *"Noncompete covenant"* does not include any of the  
31 following:

32 (1) A covenant not to solicit.

33 (2) A confidentiality agreement or covenant.

34 (3) A covenant or agreement prohibiting use or disclosure  
35 of trade secrets or inventions.

1 (4) Invention assignment agreements or covenants.

2 Sec. 4. NEW SECTION. 95.2 Impermissible noncompete  
3 covenants.

4 The following noncompete covenants are void and violate this  
5 chapter:

6 1. A noncompete covenant within an employment agreement  
7 or contract in which an employee's earnings are less than one  
8 hundred fifty percent of the state or federal minimum wage.

9 2. A noncompete covenant with an employee unless the  
10 employer can show beyond a preponderance of the evidence that  
11 there is a clear and inherent risk of unfair competition  
12 absent the noncompete covenant and the noncompete covenant  
13 was narrowly tailored to address the risk in restrictions to  
14 geographic area and duration of the noncompete covenant.

15 Sec. 5. NEW SECTION. 95.3 Exceptions.

16 1. A covenant or agreement entered into by a person that  
17 sells the goodwill of a business and the person's partners,  
18 members, or shareholders may agree with the buyer to refrain  
19 from carrying on a similar business within a reasonable  
20 geographic area and for a reasonable length of time, if the  
21 buyer or any person deriving title to the goodwill from the  
22 buyer carries on a like business in that area.

23 2. A covenant or agreement entered into by partners,  
24 members, or shareholders, upon or in anticipation of a  
25 dissolution of a partnership, limited liability company, or  
26 corporation; upon or in anticipation of a dissociation of a  
27 partner or member; or as part of an agreement addressing the  
28 dissociation or sale of a partner, member, or shareholder's  
29 ownership interest, may agree that all or any number of them  
30 will not carry on a similar business within a reasonable  
31 geographic area where the partnership, limited liability  
32 company, or corporation business has been transacted, or within  
33 a specified part of the area.

34 Sec. 6. NEW SECTION. 95.4 Remedies.

35 1. In addition to any remedies available under any agreement

1 between the employer and the employee or under any other  
2 statute, in a civil action, if an employer is found to have  
3 violated this chapter, the employee shall recover from the  
4 employer all reasonable attorney fees regarding an attempt to  
5 enforce a noncompete covenant, court costs, lost wages, and  
6 at the discretion of the court, liquidated damages of up to  
7 triple the amount of lost wages for willful violations of this  
8 chapter.

9 2. An employer found to have violated this chapter may be  
10 fined a five thousand dollar civil penalty per violation by the  
11 commissioner. Penalties shall be paid to the commissioner and  
12 transferred to the general fund.

13 Sec. 7. NEW SECTION. 95.5 Rules.

14 The commissioner shall adopt rules pursuant to chapter 17A  
15 to administer and enforce this chapter.

16 Sec. 8. APPLICABILITY. This Act applies to covenants not  
17 to compete entered into on or after the effective date of this  
18 Act.

19 EXPLANATION

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

22 This bill relates to noncompete covenants, as defined in the  
23 bill, contained within employment contracts and provisions that  
24 are prohibited and void.

25 The bill provides that if a person makes less than 150  
26 percent of the minimum wage, a noncompete covenant is  
27 unenforceable and violates the bill. The bill provides  
28 that a noncompete covenant with a non-low-wage employee is  
29 unenforceable and violates the bill unless the employer can  
30 show that the noncompete covenant is necessary due to a clear  
31 and inherent risk of unfair competition and the noncompete  
32 covenant was narrowly tailored to mitigate the risk. The bill  
33 includes exceptions to these provisions.

34 A prevailing employee is entitled to recover reasonable  
35 attorney fees, court costs, lost wages, and at the discretion

1 of the court, liquidated damages of up to triple the amount of  
2 lost wages for willful violations of the bill. An employer  
3 found to be in violation of the bill is subject to a \$5,000  
4 penalty per violation payable to the labor commissioner for  
5 deposit in the general fund.

6 The bill applies to covenants not to compete entered into on  
7 or after the effective date of the bill.