

2020 -- S 2087 AS AMENDED

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LC003485
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - NONCOMPETITION AGREEMENTS
- BROADCAST EMPLOYEES

Introduced By: Senators Lombardi, Nesselbush, Ciccone, Conley, and McCaffrey

Date Introduced: January 21, 2020

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
2 entitled "Rhode Island Noncompetition Agreement Act [Effective January 15, 2020]" are hereby
3 amended to read as follows:

4 **28-59-2. Definitions. [Effective January 15, 2020.]**

5 As used in this chapter:

6 (1) "Associated broadcast entities" means entities that provide reporting services to
7 broadcast television or radio stations, including, without limitation, subcontractors that provide
8 weather, sports, traffic, and other reports for broadcast or cablecast;

9 (2) "Broadcast employee" means any employee of a broadcast industry employer, except
10 those employees whose services primarily include sales or management functions;

11 ~~(4)~~(3) "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 (4) "Broadcast industry employer" means the owner or operator of one or more broadcast
15 television or radio stations, including any associated broadcast entity, but excluding cable stations
16 or cable networks;

17 (5) "Broadcast television or radio station" means an entity that is owned or operated
18 either by holding a Federal Communications Commission television or radio license for the

1 station, or by operating a station through a local service, sales, marketing, or outsourcing
2 agreement;

3 (6) "Cable network" means an entity that distributes programming to two (2) or more
4 local cable systems;

5 (7) "Cable station" means an entity that produces or transmits programming to one or
6 more local cable systems; and

7 ~~(2)~~(8) "Earnings" means wages or compensation paid to an employee in the first forty
8 (40) hours of work in a given week, not inclusive of hours paid at an overtime, Sunday, or
9 holiday rate.

10 ~~(3)~~(9) "Employee" means an individual who works for hire, including an individual
11 employed in a supervisory, managerial, or confidential position, but shall not include an
12 independent contractor.

13 ~~(4)~~(10) "Employer" means any person, business entity, partnership, individual
14 proprietorship, joint venture, firm, company, or other similar legal entity that employs one or
15 more employees, and shall include the state and its instrumentalities and political subdivisions,
16 public corporations, and charitable organizations.

17 ~~(5)~~(11) "Forfeiture agreement" means an agreement that imposes adverse financial
18 consequences on a former employee as a result of the termination of an employment relationship,
19 regardless of whether the employee engaged in competitive activities, following cessation of the
20 employment relationship. Forfeiture agreements do not include forfeiture for competition
21 agreements.

22 ~~(6)~~(12) "Forfeiture for competition agreement" means an agreement that by its terms or
23 through the manner in which it is enforced, imposes adverse financial consequences on a former
24 employee as a result of the termination of an employment relationship if the employee engages in
25 competitive activities.

26 (13) "Local cable system" means a cable system, as defined in 47 U.S.C. 522, as from
27 time to time amended, operating in the state.

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

32 ~~(8)~~(15) "Noncompetition agreement" means an agreement between an employer and an
33 employee, or otherwise arising out of an existing or anticipated employment relationship, under
34 which the employee or expected employee agrees that he or she will not engage in certain

1 specified activities competitive with his or her employer after the employment relationship has
2 ended. Noncompetition agreements include forfeiture for competition agreements, but do not
3 include:

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

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

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

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

14 (v) Forfeiture agreements;

15 (vi) Nondisclosure or confidentiality agreements;

16 (vii) Invention assignment agreements;

17 (viii) Noncompetition agreements made in connection with the cessation of or separation
18 from employment if the employee is expressly granted seven (7) business days to rescind
19 acceptance; or

20 (ix) Agreements by which an employee agrees to not reapply for employment to the same
21 employer after termination of the employee.

22 ~~(9)~~(16) "Trade secret" means information as defined in § 6-41-1.

23 **28-59-3. Enforceability. [Effective January 15, 2020.]**

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

26 (1) An employee who is classified as nonexempt and exempt under the Fair Labor
27 Standards Act, 29 U.S.C. § 201-219;

28 (2) Undergraduate or graduate students who participate in an internship or otherwise
29 enter a short-term employment relationship with an employer, whether paid or unpaid, while
30 enrolled at an educational institution;

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

32 (4) A low-wage employee.

33 (b) No broadcast industry employer employment contract for the services of a broadcast
34 employee may contain a provision requiring that such broadcast employee:

1 (1) Refrain from obtaining employment in a specified geographical area for a specified
2 period of time after termination of employment with that broadcast industry employer;

3 (2) Disclose the terms or conditions of an offer of employment, or the existence of any
4 such offer, from any other broadcast industry employer following the expiration of the term of the
5 employment contract; or

6 (3) Agree to enter into a subsequent employment contract with the broadcast industry
7 employer, or extend or renew the existing employment contract, upon the same terms and
8 conditions offered by a prospective employer.

9 (c) Any person who is aggrieved by a violation of this section may bring a civil action in
10 the superior court to recover damages, together with court costs and reasonable attorneys' fees.

11 ~~(b)~~(d) This section does not render void or unenforceable the remainder of a contract or
12 agreement containing the unenforceable noncompetition agreement, nor does it preclude the
13 imposition of a noncompetition restriction by a court, whether through preliminary or permanent
14 injunctive relief or otherwise, as a remedy for a breach of another agreement or of a statutory or
15 common law duty.

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

19 (f) The provisions of this section shall apply to employment contracts entered into,
20 renewed, or extended on or after January 1, 2021.

21 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - NONCOMPETITION AGREEMENTS
- BROADCAST EMPLOYEES

- 1 This act would prohibit the inclusion of noncompetition agreements in broadcast industry
- 2 employment contracts that are entered into after January 1, 2021.
- 3 This act would take effect upon passage.

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