



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5570

Introduced 2/15/2012, by Rep. Thomas Morrison

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Employment Noncompete Agreement Act. Contains a finding that all employers have vested, protectable interests in their customers, clients, and identified prospects which are legitimately protectable through the use of noncompete agreements. Sets forth criteria for a valid noncompete agreement between an employer and an employee. Provides that a noncompete agreement may prohibit any solicitation of an employer's existing customers, clients, identified prospective customers, and other employees during the post-employment restriction period. Provides that the restriction period must have a reasonable relationship to an employee's position and salary at the time of termination and may not exceed specified maximum periods based on annualized compensation. Provides that no specific or additional consideration is required to be paid by an employer to an employee to enforce a noncompete agreement. Establishes remedies.

LRB097 18586 JLS 63818 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Employment Noncompete Agreement Act.

6 Section 5. Finding. The General Assembly finds as a matter  
7 of public policy that all employers have vested, protectable  
8 interests in their customers, clients, and identified  
9 prospects which are legitimately protectable through the use of  
10 noncompete agreements.

11 Section 10. Definitions. As used in this Act:

12 "Annualized compensation" means all salary, commissions,  
13 and cash bonuses received by an employee during the 120-day  
14 period ending on the last day of the month immediately  
15 preceding the month in which the employer-employee  
16 relationship is terminated, multiplied by 3.

17 "Noncompete agreement" means an agreement between an  
18 employer and an employee that is specifically designed to  
19 impede the ability of an employee from competing with an  
20 employer upon the termination of the employment relationship.

21 Section 15. Requirements.

1           (a) A noncompete agreement is valid if it meets all of the  
2 following criteria:

3           (1) The noncompete agreement must be in writing and be  
4 signed by both the employee and employer.

5           (2) The noncompete agreement may prohibit any  
6 solicitation of an employer's existing customers, clients,  
7 identified prospective customers, and other employees  
8 during the period of any post-employment restriction  
9 period.

10          (3) The duration of a post-employment restriction  
11 period must have a reasonable relationship to an employee's  
12 position and salary at the time of termination and may not  
13 exceed the applicable maximum period as follows:

14           (A) If the employee's annualized compensation  
15 at the time of termination is less than \$50,000,  
16 the maximum period is 6 months.

17           (B) If the employee's annualized compensation  
18 at the time of termination is at least \$50,000 but  
19 less than \$100,000, the maximum period is 9 months.

20           (C) If the employee's annualized compensation  
21 at the time of termination is at least \$100,000 but  
22 less than \$150,000, the maximum period is 12  
23 months.

24           (D) If the employee's annualized compensation  
25 at the time of termination is at least \$150,000,  
26 the maximum period is 18 months.

1           (b) No specific or additional consideration is required to  
2 be paid by an employer to an employee to enforce a noncompete  
3 agreement.

4           Section 20. Remedies.

5           (a) The prevailing party in a proceeding to enforce a valid  
6 noncompete agreement is entitled to recover damages, costs and  
7 expenses, and reasonable attorney's fees.

8           (b) A subsequent employer of an employee who is a party to  
9 a valid noncompete agreement must honor the noncompete  
10 agreement. A subsequent employer who aids and abets an  
11 employee's breach of a valid noncompete agreement is liable for  
12 damages, costs and expenses, and reasonable attorney's fees  
13 incurred by the employer who is a party to the valid noncompete  
14 agreement.

15           Section 25. Applicability.

16           (a) This Act applies to noncompete agreements entered into  
17 on or after its effective date.

18           (b) This Act does not apply to a contract to which the  
19 Broadcast Industry Free Market Act applies.

20           (c) This Act shall not be construed to affect or amend the  
21 Illinois Trade Secrets Act.