

Massachusetts Noncompete Bills

| Bill Number | Sponsors | Retroactive | Ban | Advance Notice | Basic Requirements | Garden Leave | Additional Consideration for Mid-Employment Agreement | Maximum Duration | Legitimate Business Interests (LBI) | Presumptions | Overly-broad restrictions | Exemptions | Agreements Excluded from Definition of Noncompete | Notice of Intent to Enforce | Springing Noncompete | Choice of Law and Venue | Misc |
|-------------|--|-------------|-----|--|---|--------------|---|--|---|--|---------------------------|--|---|---|----------------------|--|---|
| H.2366 | Lori A. Ehrlich William N. Brownsberger Ruth B. Balsler Jennifer E. Benson James M. Cantwell Marjorie C. Decker Carolyn C. Dykema James B. Eldridge Sean Garballey Colleen M. Garry Kenneth L. Gordon Paul R. Heroux Louis L. Kafka Mary S. Keefe Kay Khan James R. Micelli Sarah K. Peake Alice Hanlon Peisch Chris Walsh | X | X | <ul style="list-style-type: none"> At inception of employment, with offer letter and at least 2 weeks before employment, unless quicker start time and waived in the agreement. Mid-employment, 10 business days. | Must be: <ul style="list-style-type: none"> In writing Signed by both Include notice of the right to counsel Reviewed every 3 years Necessary to protect an LBI Reasonable in geographic reach and in scope of restricted activities in relation to the interests protected Consonant with public policy | X | ✓ | 1 year, but 2 years if breach of fiduciary duty or misappropriation of property. | <ul style="list-style-type: none"> Trade secrets Confidential information Goodwill | <ul style="list-style-type: none"> Presumed necessary if LBI cannot be adequately protected through an alternative restrictive covenant Presumed necessary if employee misappropriated property or breached fiduciary duty Presumed reasonable in duration if complies with duration limits Presumed geographically reasonable if limited to area in which employee provided services or had material presence or influence in last two years Presumed reasonable in scope if restricted activities protect LBI and are limited to the types of services provided by the employee in last two years | Purple pencil | <ul style="list-style-type: none"> FLSA Exempt College and graduate students Laid off employees People who are 18 or under Temporary independent contractors | <ul style="list-style-type: none"> No-raid/no hire agreements Nonsolicitation/acceptance of business Sale of business (if has significant interest and receives significant consideration or benefit) Noncompete outside of employment Forfeiture agreement NDA Invention assignment Noncompete at termination of employment, if employee given 7 business days to revoke Agreement not to reapply | Must notify of intent to enforce by certified mail within 10 days of employee's departure. Exceptions where employee: <ul style="list-style-type: none"> Took property Breached noncompete Breached other restrictive covenant Breached a fiduciary duty | ✓ | <ul style="list-style-type: none"> MA law if employee lived or worked in MA at time of and at least 30 days prior to termination of employment Venue in the MA county or employee's residence of Suffolk county if agreed upon or employee not a MA resident | |
| S.988 | William N. Brownsberger Lori A. Ehrlich Eric P. Lesser Paul R. Heroux Alice Hamlon Peisch | | | | | | | | | | | | | | | | |
| S.1017 | Patricia Jehlen | X | X | <ul style="list-style-type: none"> At inception of employment, notice of the agreement must be provided with the offer letter and at least 10 business days before employment. [No provision for a waiver for a quicker start time.] Mid-employment, "notice of the agreement" must be provided 10 business days in advance. | Must be: <ul style="list-style-type: none"> In writing Signed by both Include notice of the right to counsel Reviewed every 5 years Necessary to protect an LBI Reasonable in geographic reach and in scope of restricted activities in relation to the interests protected Consonant with public policy Supported by garden leave or mutually-agreed consideration | X | ✓ "Fair and reasonable" | 3 months, but 2 years if breach of fiduciary duty or misappropriation of property. | <ul style="list-style-type: none"> Trade secrets Confidential information Goodwill | <ul style="list-style-type: none"> Presumed necessary if LBI cannot be adequately protected through an alternative restrictive covenant Presumed geographically reasonable if limited to area in which employee worked or had job responsibilities in last year Presumed reasonable in scope if restricted activities protect LBI and are limited to the types of services provided by the employee in last two years | Red pencil | <ul style="list-style-type: none"> FLSA Exempt College and graduate students Laid off employees People who are 18 or under Comp is less than 2x average weekly wage in MA (G.L. c. 151A, § 29) Independent contractors | <ul style="list-style-type: none"> No-raid/no hire agreements Nonsolicitation/acceptance of business Sale of business (if has significant interest and receives significant consideration or benefit) Noncompete outside of employment Forfeiture agreement NDA Invention assignment Garden leave Noncompete at termination of employment, if employee given 7 business days to revoke Agreement not to reapply | Must notify of intent to enforce by certified mail within 10 days of employee's departure. Exceptions where employee: <ul style="list-style-type: none"> Took property Breached a fiduciary duty | ✓ | <ul style="list-style-type: none"> MA law if employee lived or worked in MA at time of and at least 30 days prior to termination of employment Venue in the MA county or employee's residence of Suffolk county if agreed upon or employee not a MA resident | Penalties for defending or challenging a noncompete are void. |

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| S.840 | Eileen M. Donoghue Jason M. Lewis Mary S. Keefe Sheila C. Harrington Chris Walsh | | X | <ul style="list-style-type: none"> At inception of employment, notice of the agreement must be provided with the offer letter and at least 10 business days before employment. <i>[No provision for a waiver for a quicker start time.]</i> Mid-employment, "notice of the agreement" must be provided 10 business days in advance. | Must be: <ul style="list-style-type: none"> In writing Signed by both Include notice of the right to counsel Reviewed - and consent to validity obtained - every 3 years Necessary to protect an LBI Reasonable in geographic reach and in scope of restricted activities in relation to the interests protected Consonant with public policy Supported by garden leave or mutually-agreed consideration | <ul style="list-style-type: none"> 100% of the highest base salary, bonus, and benefits in last 2 years or other greater consideration agreed upon within 30 days of notice of termination from employment Cannot be unilaterally discontinued unless breach Payment obligations can be voided if employee terminated for | <p style="text-align: center;">✓ "Fair and reasonable"</p> | 1 year - not subject to extension based on inevitable disclosure | <ul style="list-style-type: none"> Trade secrets Confidential information | <ul style="list-style-type: none"> Presumed necessary only if LBI cannot be adequately protected through an alternative restrictive covenant Presumed geographically reasonable if limited to area in which employee provided services or had a material presence or influence. Presumed reasonable in scope if restricted activities protect LBI and are limited to the types of services provided by the employee in last two years | Red pencil | <ul style="list-style-type: none"> FLSA Exempt College and graduate students Laid off employees People who are 18 or under Employee does not know trade secrets or other confidential information Comp is less than 2x average weekly wage in MA (G.L. c. 151A, § 29) Independent contractors | <ul style="list-style-type: none"> No-raid/no hire agreements Nonsolicit/acceptance of business Sale of business (if has significant interest and receives significant consideration or benefit) Noncompete outside of employment Forfeiture agreement NDA Invention assignment Garden leave Noncompete at termination of employment, if employee given 7 business days to revoke Agreement not to reapply | "Must notify of intent to enforce by certified mail within 10 days of employee's departure. Exceptions where employee is terminated for good cause. | <p style="text-align: center;">✓ [Needs to be harmonized with position on inevitable disclosure]</p> | <ul style="list-style-type: none"> MA law if employee lived or worked in MA at time of and at least 30 days prior to termination of employment Venue in the MA county or employee's residence of Suffolk county if agreed upon or employee not a MA resident | Penalties for defending or challenging a noncompete are void. |
| H.2371 | Bradley H. Jones, Jr. Susan Williams Gifford Paul K. Frost Todd M. Smola Sheila C. Harrington Steven S. Howitt Nicholas A. Boldyga Kimberly N. Ferguson | January 1, 2018 | X | <ul style="list-style-type: none"> At inception of employment, notice of the agreement must be provided with the offer letter and at least 10 business days before employment. <i>[No provision for a waiver for a quicker start time.]</i> Mid-employment, "notice of the agreement" must be provided 10 business days in advance. | Must be: <ul style="list-style-type: none"> In writing Signed by both Include notice of the right to counsel Necessary to protect an LBI Reasonable in geographic reach and in scope of restricted activities in relation to the interests protected Consonant with public policy Supported by garden leave or mutually-agreed consideration | <ul style="list-style-type: none"> 50% of the highest base salary in last 2 years Cannot be unilaterally discontinued unless breach Does not require payments in the second year (where a second year is permitted) | <p style="text-align: center;">✓ "Fair and reasonable"</p> | 1 year, but 2 years if breach of fiduciary duty or misappropriation of property. | <ul style="list-style-type: none"> Trade secrets Confidential information Goodwill | <ul style="list-style-type: none"> Presumed necessary if LBI cannot be adequately protected through an alternative restrictive covenant Presumed geographically reasonable if limited to area in which employee worked or had job responsibilities in last year Presumed reasonable in scope if restricted activities protect LBI and are limited to the types of services provided by the employee in last two years | Reform | <ul style="list-style-type: none"> FLSA Exempt College and graduate students Laid off employees <i>[unless agreement complies with garden leave]</i> People who are 18 or under | <ul style="list-style-type: none"> No-raid/no hire agreements Nonsolicit/acceptance of business Sale of business (if has significant interest and receives significant consideration or benefit) Noncompete outside of employment Forfeiture agreement NDA Invention assignment Garden leave Noncompete at termination of employment, if employee given 7 business days to revoke Agreement not to reapply Forfeiture for competition | X | <p style="text-align: center;">✓</p> | [No choice of law] Venue in the county of employee's residence or Suffolk county - exclusively in Superior Court or BLS | |

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|-------------|---|-------------|-----|----------------|--------------------|--------------|---|------------------|-------------------------------------|--------------|---------------------------|------------|--|-----------------------------|----------------------|-------------------------|------|
| S.1020 | Jason M. Lewis Chris Walsh Denise Provost Jennifer E. Benson Barbara A. L'Italien Steven Ultrino James B. Eldridge Mary S. Keefe Eric P. Lesser | ✓ | ✓ | | | | | | | | | | <ul style="list-style-type: none"> • No-raid/no hire agreements • Nonsolicit/acceptance of business • NDA • Sale of business (if has 10% or greater interest and receives significant consideration) • Noncompete outside of employment • Forfeiture agreement • Agreement not to reapply | | | | |