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(c) A court may award to a defendant who prevails in an action brought pursuant to this section costs and fees, including reasonable attorneys' fees, if the court finds the action was not well-grounded in fact and warranted by existing law or was interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) This chapter shall not be construed to limit rights and remedies otherwise available under law to the commonwealth or to any person.

Section 4. The attorney general shall have the same authority under this chapter to make rules, conduct civil investigations, bring civil actions and enter into assurances of discontinuance as provided under chapter 93A. In an action brought by the attorney general pursuant to this section, the court may award or impose any relief available under this chapter.

SECTION 21. Chapter 149 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 24K the following section:-

Section 24L. (a) As used in this section, the following words shall have the following meanings:-

“Business entity”, any person or group of persons performing or engaging in any activity, enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit or not for profit, including but not limited to corporations, limited liability companies, limited partnerships or limited liability partnerships.

“Employee”, an individual who is considered an employee under section 148B of this chapter; provided, however, that the term “employee”, as used in this chapter, shall also include independent contractors under section 148B.

“Forfeiture agreement”, an agreement that imposes adverse financial consequences on a former employee as a result of the termination of an employment relationship, regardless of whether the employee engages in competitive activities following cessation of the employment relationship. Forfeiture agreements do not include forfeiture for competition agreements.

“Forfeiture for competition agreement”, an agreement that by its terms or through the manner in which it is enforced imposes adverse financial consequences on a former employee as a result of the termination of an employment relationship if the employee engages in competitive activities.

“Garden leave clause”, a provision within a noncompetition agreement by which an employer agrees to pay the employee during the restricted period, provided that such provision shall become effective upon termination of employment unless the restriction upon post-employment activities are waived by the employer or ineffective under subsection (c) (iii).

“Noncompetition agreement”, an agreement between an employer and an employee, or otherwise arising out of an existing or anticipated employment relationship, under which the employee or expected employee agrees that he or she will not engage in certain specified

activities competitive with his or her employer after the employment relationship has ended. Noncompetition agreements include forfeiture for competition agreements, but do not include: (i) covenants not to solicit or hire employees of the employer; (ii) covenants not to solicit or transact business with customers, clients, or vendors of the employer; (iii) noncompetition agreements made in connection with the sale of a business entity or substantially all of the operating assets of a business entity or partnership, or otherwise disposing of the ownership interest of a business entity or partnership, or division or subsidiary thereof, when the party restricted by the noncompetition agreement is a significant owner of, or member or partner in, the business entity who will receive significant consideration or benefit from the sale or disposal; (iv) noncompetition agreements outside of an employment relationship; (v) forfeiture agreements; (vi) nondisclosure or confidentiality agreements; (vii) invention assignment agreements; (viii) garden leave clauses; (ix) noncompetition agreements made in connection with the cessation of or separation from employment if the employee is expressly given seven business days to rescind acceptance; or (x) agreements by which an employee agrees to not reapply for employment to the same employer after termination of the employee.

“Restricted period”, the period of time after the date of cessation of employment during which an employee is restricted by a noncompetition agreement from engaging in activities competitive with his or her employer.

(b) To be valid and enforceable, a noncompetition agreement must meet the minimum requirements of paragraphs (i) through (viii).

(i) If the agreement is entered into in connection with the commencement of employment, it must be in writing and signed by both the employer and employee and expressly state that the employee has the right to consult with counsel prior to signing. The agreement must be provided to the employee by the earlier of a formal offer of employment or 10 business days before the commencement of the employee’s employment.

(ii) If the agreement is entered into after commencement of employment but not in connection with the separation from employment, it must be supported by fair and reasonable consideration independent from the continuation of employment, and notice of the agreement must be provided at least 10 business days before the agreement is to be effective. Moreover, the agreement must be in writing and signed by both the employer and employee and expressly state that the employee has the right to consult with counsel prior to signing.

(iii) The agreement must be no broader than necessary to protect one or more of the following legitimate business interests of the employer: (A) the employer’s trade secrets, as that term is defined in section 1 of chapter 93L; (B) the employer’s confidential information that otherwise would not qualify as a trade secret; or (C) the employer’s goodwill. A noncompetition agreement may be presumed necessary where the legitimate business interest cannot be adequately protected through an alternative restrictive covenant, including but not limited to a non-solicitation agreement or a non-disclosure or confidentiality agreement.

(iv) In no event may the stated restricted period exceed 12 months from the date of cessation of employment, unless the employee has breached his or her fiduciary duty to the

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employer or the employee has unlawfully taken, physically or electronically, property belonging to the employer, in which case the duration may not exceed 2 years from the date of cessation of employment.

(v) The agreement must be reasonable in geographic reach in relation to the interests protected. A geographic reach that is limited to only the geographic areas in which the employee, during any time within the last 2 years of employment, provided services or had a material presence or influence is presumptively reasonable.

(vi) The agreement must be reasonable in the scope of proscribed activities in relation to the interests protected. A restriction on activities that protects a legitimate business interest and is limited to only the specific types of services provided by the employee at any time during the last 2 years of employment is presumptively reasonable.

(vii) The noncompetition agreement shall be supported by a garden leave clause or other mutually-agreed upon consideration between the employer and the employee, provided that such consideration is specified in the noncompetition agreement. To constitute a garden leave clause within the meaning of this section, the agreement must (i) provide for the payment, consistent with the requirements for the payment of wages under section 148 of chapter 149 of the general laws, on a pro-rata basis during the entirety of the restricted period, of at least 50 percent of the employee's highest annualized base salary paid by the employer within the 2 years preceding the employee's termination; and (ii) except in the event of a breach by the employee, not permit an employer to unilaterally discontinue or otherwise fail or refuse to make the payments; provided, however, if the restricted period has been increased beyond 12 months as a result of the employee's breach of a fiduciary duty to the employer or the employee has unlawfully taken, physically or electronically, property belonging to the employer, the employer shall not be required to provide payments to the employee during the extension of the restricted period.

(viii) The agreement must be consonant with public policy.

(c) A noncompetition agreement shall not be enforceable against the following types of workers: (i) an employee who is classified as nonexempt under the Fair Labor Standards Act, 29 U.S.C. 201-219; (ii) undergraduate or graduate students that partake in an internship or otherwise enter a short-term employment relationship with an employer, whether paid or unpaid, while enrolled in a full-time or part-time undergraduate or graduate educational institution; (iii) employees that have been terminated without cause or laid off; or (iv) employees age 18 or younger. This section does not render void or unenforceable the remainder of the contract or agreement containing the unenforceable noncompetition agreement, nor does it preclude the imposition of a noncompetition restriction by a court, whether through preliminary or permanent injunctive relief or otherwise, as a remedy for a breach of another agreement or a statutory or common law duty.

(d) A court may, in its discretion, reform or otherwise revise a noncompetition agreement so as to render it valid and enforceable to the extent necessary to protect the applicable legitimate business interests.

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(e) No choice of law provision that would have the effect of avoiding the requirements of this section will be enforceable if the employee is, and has been for at least 30 days immediately preceding his or her cessation of employment, a resident of or employed in Massachusetts at the time of his or her termination of employment.

(f) All civil actions relating to employee noncompetition agreements subject to this section shall be brought in the county where the employee resides or, if mutually agreed upon by the employer and employee, in Suffolk county; provided that, in any such action brought in Suffolk county, the superior court or the business litigation session of the superior court shall have exclusive jurisdiction.

SECTION 22. Said chapter 149 is hereby further amended by adding the following 12 sections:-

Section 192. As used in this section and in sections 193 to 203, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Client” or “client company”, a person who enters into a professional employer agreement with a professional employer organization.

“Covered employee”, an individual employed in a PEO relationship where the individual’s employment is subject to a professional employer agreement; provided, however, that “covered employee” shall include individuals who are officers, directors, shareholders, partners and managers of the client, except to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals shall not be covered employees; provided further, that such individuals meet the criteria of this paragraph and act as operational managers or perform day-to-day operational services for the client.

“Director”, the director of the department of labor standards.

“Employment agency”, as defined in section 46A of chapter 140.

“PEO group”, 2 or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent or controlling person.

“PEO relationship”, a co-employment relationship, in which all the rights, duties and obligations of an employer that arise out of an employment relationship have been allocated between the PEO and the client pursuant to a professional employer agreement; provided, however, that a staffing agency and an employment agency shall not be a PEO; provided further, that in a PEO relationship: (i) the professional employer organization shall be entitled to enforce only such employer rights and is subject to only those obligations allocated in the professional employment agreement or as specifically required pursuant to section 192 to 203, inclusive; (ii) the client shall be entitled to enforce those rights, and obligated to provide and perform those employer obligations, allocated to the client by the written professional employer agreement; (iii) the client shall be entitled to enforce any right and obligated to perform any obligation of an employer not specifically allocated to the PEO or section 192 to 203, inclusive; and (iv) neither the client nor the PEO may delegate duties

SECTION 66. (a) The Massachusetts Department of Transportation, in conjunction with the executive office of housing and economic development, shall conduct a feasibility study relative to the re-establishment of a crossing over the Westfield river at the site of the former Woronoco paper mill located in the town of Russell. The study shall examine and evaluate the costs of and economic and redevelopment opportunities related to re-establishing a crossing over Westfield river including, but not limited to: (i) the projected capital costs; (ii) the projected operating costs; (iii) the projected use levels; (iv) the environmental and community impact estimates; (v) the availability of federal, state, local and private sector funding sources; and (vi) the resulting economic, social and cultural benefits to the town of Russell and the surrounding region.

(b) The department shall file a report of the results of its study with the clerks of the senate and house of representatives, the senate and house committees on ways and means and the joint committee on transportation not later than September 31, 2019.

SECTION 67. The rotary on state highway route 28 in the town of Bourne at the entrance to Joint Base Cape Cod shall be designated and known as "Heroes Circle" in honor of the service of the men and women of the Armed Forces of the United States of America. The Massachusetts Department of Transportation shall erect and maintain suitable markers near the rotary bearing the designation in compliance with the standards of the department.

SECTION 68. Each professional employment organization as defined by section 192 of chapter 149 of the General Laws operating within the commonwealth as of the effective date of this act shall complete its initial registration not more than 180 days after the effective date of this act. Initial registration shall be valid for 1 year after the date of issuance.

SECTION 69. The department of labor standards shall promulgate regulations to effectuate the purposes of sections 192 to 203, inclusive, of chapter 149 of the General Laws.

SECTION 70. Sections 42 to 42G, inclusive, of chapter 93 of the General Laws shall take effect on October 1, 2018, and shall not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, said sections 42 to 42G, inclusive, also do not apply to the continuing misappropriation that occurs after the effective date.

SECTION 71. Section 24L of chapter 149 of the General Laws may be referred to as the Massachusetts Noncompetition Agreement Act and shall apply to employee noncompetition agreements entered into on or after October 1, 2018.

SECTION 72. Sections 5, 12, 14, 16 and 17 shall take effect and apply to tax years beginning on January 1, 2019.

SECTION 73. Sections 15 and 18 shall take effect on January 1, 2022.

SECTION 74. Sections 24 to 25, inclusive, sections 27 to 28, inclusive, sections 31 to 42, inclusive, and sections 47 to 48, inclusive, shall take effect 90 days after the passage of this act.