

	A	B	C
1	Issue	House Bill	Senate Bill
2	Definition of Employee	Includes independent contractors. [Section 3(a)]	Removes reference to independent contractors, but adds language in Section 3(c) that they are exempt from noncompetes. [Section 3(a)]
3	Definition of Noncompete	[Section 3(a)]	[Section 3(a)]
4	Regular Review of Noncompetes	None.	Every 3 years. [Section 3(b)(4)]
5	Duration	"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 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." [Section 3(b)(iv)]	"The restricted period shall not be more than 3 months from the date of termination of employment, unless the employee has breached a fiduciary duty to the employer or the employee has unlawfully taken, physically or electronically, property belonging to the employer, in which case the duration shall not be more than 2 years from the date of termination of employment." [Section 3(b)(6)]

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6	Extension of the Restricted Period for Misconduct	The restricted period may extend in the case of employee misconduct. [Section 3(b)(iv)]	Same. [Section 3(b)(6)]

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7	Prior Notice of Intent to Enforce Noncompete	None.	Requires that, within 10 days following the termination of the employment relationship, the employer must notify the employee in writing of its intent to enforce the agreement. This requirement does not apply, however, in the event of employee misconduct. [Section 3(b)(9)]
8	Garden Leave	Employee must be paid at the rate of 50 percent of salary during the restriction. (Does not apply to extension based on employee misconduct.) Parties may negotiate in advance "other mutually-agreed upon consideration." [Section 3(b)(vii)]	Employee must be paid at the rate of 100 percent of earnings during the restriction. (Does not apply to extension based on employee misconduct.) Parties may negotiate after termination "other mutually-agreed upon consideration," which must equal or exceed the value of the noncompete . [Section 3(b)(10)]

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9	Exemptions	<p>1. Nonexempt employees under the Fair Labor Standards Act.</p> <p>2. Undergraduate or graduate students engaged in short-term employment.</p> <p>3. Employees who have been terminated without cause or laid off.</p> <p>4. Employees who are 18 years old or younger.</p> <p>[Section 3(c)]</p>	<p>Same as House bill, plus:</p> <p>1. Employees whose average weekly earnings are less than twice the Massachusetts average.</p> <p>2. Independent contractors.</p> <p>[Section 3(c)]</p>

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10	Enforcement Against Employees Terminated Without Cause	Part of section 3(c) covered above.	Same.
11	Reformation vs. Red Pencil	Retains current Massachusetts law, permitting a court to revise (“reform”) an overly-broad noncompete. [Section 3(e)]	Red pencil approach, which invalidates an overly-broad noncompete. [Section 3(e)]

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12	Inevitable Disclosure	None.	"A court shall not invoke the doctrine of inevitable disclosure to extend an expired noncompetition agreement or otherwise render enforceable a noncompetition agreement that fails to satisfy the requirements of paragraphs (2) to (11), inclusive, of subsection (c)." [Section 3(e)]
13	Prohibition on Penalties	None.	Prohibits contractual provisions that penalize employees for defending against or challenging the validity or enforceability of the noncompete and prohibits advance waiver of any rights in the bill. [Section 3(f)]
14	Massachusetts Law Requirement	Massachusetts law must apply if the employee is, and has been, for at least 30 days prior to termination, a resident of or employed in Massachusetts. [Section 3(e)]	Same, but modified language. [Section 3(g)]

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15	Forum Selection	<p>Any action must be brought in the county in which the employee resides or (by agreement) Suffolk County. If brought in Suffolk County, then the Superior Court (including the BLS, <i>i.e.</i>, the Business Litigation Session) has exclusive jurisdiction. [Section 3(f)]</p>	<p>Same, but eliminates the exclusivity requirement. [Section 3(h)]</p>
16	Effective Date	<p>October 1, 2016, and, for trade secrets, expressly does not apply to misappropriation commenced prior to the effective date. [Section 4; Section 5 for trade secrets]</p>	<p>Upon enactment as an emergency bill. However, the bill has inconsistent language; sections 4, 5, and 6 provide that it becomes effective on October 1, 2016.</p> <p>Eliminates the express prohibition on its application to continuing misappropriation. [Section 6]</p>
17	UTSA [Section 2]		
18	Title of the Laws	<p>The UTSA section will be referred to as the "Uniform Trade Secrets Act." [Section 2(9)]</p>	<p>Same</p>