

2147

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 15, 2015

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Introduced by M. of A. STECK -- read once and referred to the Committee  
on Labor

AN ACT to amend the labor law, in relation to the state policy against  
restraint of trade

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The labor law is amended by adding a new article 32 to read  
2 as follows:

3     ARTICLE 32

4     POLICY AGAINST RESTRAINT OF TRADE

5     SECTION 930. POLICY.

6                     931. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE.

7                     932. EXCEPTIONS.

8     S 930. POLICY. THE LEGISLATURE HEREBY REAFFIRMS THAT THE POLICY OF  
9 THIS STATE IS TO DISFAVOR RESTRICTIVE COVENANTS IN EMPLOYMENT AS CONSTI-  
10 TUTING A RESTRAINT OF TRADE.

11     S 931. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE. A COVENANT NOT TO  
12 COMPETE, OR NON-SOLICITATION AGREEMENT WITH RESPECT TO EITHER EMPLOYEES  
13 OR CUSTOMERS, SHALL NOT BE ENFORCEABLE AGAINST A FORMER EMPLOYEE NO  
14 LONGER EMPLOYED BY A BUSINESS OR INDEPENDENT CONTRACTOR NO LONGER IN A  
15 CONTRACTUAL RELATIONSHIP WITH THE BUSINESS, UNLESS (1) THE COVENANT IS  
16 REASONABLE IN GEOGRAPHIC EXTENT OR IN TIME BASED ON THE CIRCUMSTANCES OF  
17 THE CASE AND (2) ONE OF THE FOLLOWING IS TRUE:

18     (A) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR LEFT THE BUSINESS VOLUN-  
19 TARILY OR WAS INVOLUNTARILY TERMINATED OR DISCHARGED FOR MISCONDUCT; AND  
20 SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS UNIQUE AS A MATTER OF LAW. AN  
21 EMPLOYEE OR INDEPENDENT CONTRACTOR IS CONSIDERED UNIQUE IF AND ONLY IF  
22 HE OR SHE POSSESSES TRADE SECRETS OF THE BUSINESS OR CONFIDENTIAL MATE-  
23 RIAL THAT IS AKIN TO A TRADE SECRET.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (B) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR HAS PURCHASED OR SOLD ANY  
2 PORTION OF THE BUSINESS. SUCH EMPLOYEES ARE DEEMED TO HAVE LEFT THE  
3 BUSINESS VOLUNTARILY.

4 (C) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS A LEARNED PROFESSIONAL.  
5 PROVIDED, HOWEVER, THAT COVENANTS INVOLVING LEARNED PROFESSIONALS ARE  
6 NOT ENFORCEABLE IF SUCH LEARNED PROFESSIONAL WAS INVOLUNTARILY TERMI-  
7 NATED OR DISCHARGED FOR REASONS OTHER THAN MISCONDUCT.

8 (D) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS AN ATTORNEY.

9 S 932. EXCEPTIONS. SUCH RESTRICTIVE COVENANT MAY STILL BE ENFORCED IF  
10 THE EMPLOYER DEMONSTRATES THAT (1) THE EMPLOYEE LEFT ITS BUSINESS VOLUN-  
11 TARILY OR WAS TERMINATED OR DISCHARGED FOR MISCONDUCT; AND (2) THERE ARE  
12 UNUSUAL CIRCUMSTANCES UNIQUE TO THE BUSINESS AND TO THE EMPLOYEE  
13 INVOLVED SUCH THAT THE EMPLOYER HAS A COMPELLING INTEREST THAT OUTWEIGHS  
14 THE EMPLOYEE OR INDEPENDENT CONTRACTOR'S INTEREST IN BEING ABLE TO  
15 PURSUE HIS OR HER LIVELIHOOD AND THE PUBLIC INTEREST IN FREE AND OPEN  
16 COMPETITION; AND (3) SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY  
17 TO THE EXTENT NECESSARY TO PROTECT THE EMPLOYER'S COMPELLING INTEREST.

18 S 2. This act shall take effect immediately.