S T A T E   O F   N E W   Y O R K

8236--A

2011-2012 Regular Sessions

I N   A S S E M B L Y

June 8, 2011

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to enacting the broadcast employees' freedom to work act; and to repeal certain provisions of such law relating thereto

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

Section 1. This act shall be known and may be cited as the "broadcast employees' freedom to work act".

S 2. Section 202-k of the labor law is REPEALED and a new section 202-k is added to read as follows:

S 202-K. PROTECTION OF PERSONS EMPLOYED IN THE BROADCAST INDUSTRY. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "BROADCASTING INDUSTRY EMPLOYER" INCLUDES (I) TELEVISION STATIONS OR NETWORKS, RADIO STATIONS OR NETWORKS, OR CABLE STATIONS OR NETWORKS, (II) INTERNET OR SATELLITE-BASED SERVICES SIMILAR TO A BROADCAST STATION OR NETWORK AND THAT PROVIDE COVERED BROADCASTING SERVICES, AND (III) ANY OTHER ENTITY THAT PROVIDES COVERED BROADCASTING SERVICES.

(B) "COVERED BROADCASTING SERVICES" SHALL MEAN THE PROVISION OF BROADCASTING SERVICES SUCH AS NEWS, WEATHER, TRAFFIC, SPORTS, OR ENTERTAINMENT REPORTS, OR OTHER FORMS OF CONTENT PROGRAMMING; PROVIDED THAT FOR PURPOSES OF THIS SECTION, AN ENTITY SHALL NOT BE PRESUMED TO BE ACTIVELY ENGAGED IN THE PROVISION OF COVERED BROADCASTING SERVICES UNLESS AT LEAST THIRTY PERCENT OF ITS ASSETS OR EMPLOYEES ARE DEDICATED PRIMARILY TO THE PROVISION OF SUCH SERVICES.

(C) "BROADCAST EMPLOYEE" SHALL MEAN (I) ANY ON-AIR EMPLOYEE OR (II) OFF-AIR EMPLOYEE OF A BROADCASTING INDUSTRY EMPLOYER PROVIDING DIRECT SUPPORT OR SERVICES TO ANY ON-AIR EMPLOYEE, PROVIDED, THAT SUCH SUPPORT OR SERVICE RELATES TO THE CONTENT OF A BROADCAST, EXCLUDING MANAGEMENT EMPLOYEES AND SALES REPRESENTATIVES.

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

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(D) "MANAGEMENT EMPLOYEE" SHALL MEAN AN EMPLOYEE (I) WHOSE PRIMARY DUTY CONSISTS OF THE MANAGEMENT OF THE ENTERPRISE IN WHICH SUCH INDIVIDUAL IS EMPLOYED OR OF A CUSTOMARILY RECOGNIZED DEPARTMENT OR SUBDIVISION THEREOF; (II) WHO CUSTOMARILY AND REGULARLY DIRECTS THE WORK OF TWO OR MORE OTHER EMPLOYEES THEREIN; (III) WHO HAS AUTHORITY TO HIRE OR FIRE OTHER EMPLOYEES OR MAKE SUGGESTIONS AND RECOMMENDATIONS AS TO HIRING OR FIRING AND AS TO THE ADVANCEMENT AND PROMOTION OR ANY OTHER CHANGE OF STATUS OF EMPLOYEES; AND (IV) WHO CUSTOMARILY AND REGULARLY EXERCISES DISCRETIONARY POWERS.

(E) "REQUIRE AS A CONDITION OF EMPLOYMENT" SHALL MEAN TO IMPOSE ON ANY BROADCAST EMPLOYEE A COVENANT NOT TO COMPETE AS AN EXPRESS MANDATORY OBLIGATION IN CONNECTION WITH (I) AN OFFER OF EMPLOYMENT OR PROPOSED CONTRACT FOR EMPLOYMENT OR REEMPLOYMENT OR (II) CONTINUED EMPLOYMENT; PROVIDED THAT THE GRANT OF ANY AWARD OR BENEFIT THE FORFEITURE OF WHICH MAY RESULT FROM A BREACH OF A COVENANT NOT TO COMPETE SHALL NOT BE DEEMED TO IMPOSE ON ANY BROADCAST EMPLOYEE A COVENANT NOT TO COMPETE.

(F) "COVENANT NOT TO COMPETE" SHALL MEAN ANY CONDITION OF EMPLOYMENT FALLING WITHIN THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION.

2. NONCOMPETITION. A BROADCASTING INDUSTRY EMPLOYER SHALL NOT REQUIRE AS A CONDITION OF EMPLOYMENT, WHETHER IN AN EMPLOYMENT CONTRACT OR OTHERWISE, THAT A BROADCAST EMPLOYEE OR PROSPECTIVE BROADCAST EMPLOYEE REFRAIN FROM OBTAINING EMPLOYMENT:

(A) IN ANY SPECIFIED GEOGRAPHIC AREA;

(B) FOR A SPECIFIC PERIOD OF TIME; OR

(C) WITH ANY PARTICULAR EMPLOYER OR IN ANY PARTICULAR INDUSTRY;

IN EACH CASE, AFTER THE CONCLUSION OF EMPLOYMENT WITH SUCH BROADCASTING INDUSTRY EMPLOYER. THIS SECTION SHALL NOT APPLY TO PREVENTING THE ENFORCEMENT OF SUCH A COVENANT DURING THE TERM OF AN EMPLOYMENT CONTRACT.

3. EXCLUSIONS. THIS SECTION SHALL NOT PREVENT:

(A) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF SUCH A COVENANT NOT TO COMPETE DURING THE REMAINING TERM OF EMPLOYMENT AS SET FORTH IN AN EMPLOYMENT AGREEMENT BETWEEN A BROADCAST EMPLOYEE AND A BROADCASTING INDUSTRY EMPLOYER, IN THE EVENT THAT THE EMPLOYMENT OF THE BROADCAST EMPLOYEE IS TERMINATED FOR ANY REASON;

(B) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF A COVENANT NOT TO COMPETE, NOT REQUIRED AS A CONDITION OF EMPLOYMENT, BUT AGREED TO BY A BROADCAST EMPLOYEE IN EXCHANGE FOR ADDITIONAL AND INDEPENDENT CONSIDERATION SUCH AS (I) SEVERANCE, INCLUDING BUT NOT LIMITED TO ANY SEVERANCE DUE UNDER AN APPLICABLE COLLECTIVE BARGAINING AGREEMENT, OR (II) ANY OTHER POST-TERMINATION BENEFIT OR ARRANGEMENT.

(C) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF AN EXCLUSIVE GOOD-FAITH NEGOTIATION PROVISION UNDER WHICH, DURING THE TERM OF EMPLOYMENT AND FOR A REASONABLE PERIOD THEREAFTER (NOT TO EXCEED ONE HUNDRED EIGHTY DAYS FROM THE TERMINATION OF A BROADCAST EMPLOYEE'S EMPLOYMENT AGREEMENT OR ARRANGEMENT), SUCH BROADCAST EMPLOYEE HAS AGREED TO NEGOTIATE EXCLUSIVELY AND IN GOOD FAITH WITH HIS OR HER EMPLOYER OR FORMER EMPLOYER (AS THE CASE MAY BE) BEFORE ENTERING INTO NEGOTIATIONS WITH, OR ACCEPTING EMPLOYMENT WITH, ANY OTHER PARTY;

(D) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF A RIGHT OF FIRST REFUSAL UNDER WHICH, FOR A REASONABLE PERIOD THEREAFTER (NOT TO EXCEED ONE HUNDRED EIGHTY DAYS FROM THE TERMINATION OF A BROADCAST EMPLOYEE'S EMPLOYMENT AGREEMENT OR ARRANGEMENT), SUCH BROADCAST EMPLOYEE HAS AGREED TO (I) PROVIDE HIS OR HER FORMER EMPLOYER WITH NOTICE OF THE MATERIAL TERMS OF ANY OTHER OFFER OF EMPLOYMENT; (II) PROVIDE HIS OR HER

FORMER EMPLOYER WITH A RIGHT TO MATCH THAT OFFER; AND (III) ACCEPT A MATCHING OFFER MADE BY THE FORMER EMPLOYER;

(E) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OR ANY POST-CONTRACTUAL RESTRICTION FOR A BROADCAST EMPLOYEE EARNING MORE THAN ONE HUNDRED THOUSAND DOLLARS ANNUALLY; OR

(F) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF ANY POST-CONTRACTUAL CONFIDENTIALITY OR NON-DISCLOSURE PROVISION IN THE BROADCAST EMPLOYEE'S CONTRACT.

4. DAMAGES. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE CIVILLY LIABLE TO A BROADCAST EMPLOYEE FOR DIRECT AND ACTUAL DAMAGES ONLY (AND NOT CONSEQUENTIAL OR PUNITIVE DAMAGES), AS WELL AS ATTORNEY'S FEES AND COSTS.

S 3. Waiver. The protections provided by section 202-k of the labor law, as added by section two of this act, may not be waived, and any clause, covenant or agreement to waive such prohibition shall be null and void and may not be enforced against the parties in any court or other jurisdiction.

S 4. This act shall take effect immediately; provided that the provisions of this act are retroactive and shall apply only to contracts entered into, renewed, or extended on or after August 5, 2008; provided further that the provisions of this section shall not apply to any broadcasting industry employer seeking to enforce a written covenant not to compete that was in effect prior to August 5, 2008 and that has not otherwise been renewed or extended after such date, regardless of whether the termination of employment of a broadcast employee occurs prior to or after the effective date of this act.