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

7361

I N S E N A T E

May 14, 2014

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed 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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

ARTICLE 32

POLICY AGAINST RESTRAINT OF TRADE

SECTION 930. POLICY.

931. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE.

932. BALANCING TEST.

S 930. POLICY. THE LEGISLATURE HEREBY REAFFIRMS THAT THE POLICY OF THIS STATE IS TO DISFAVOR RESTRICTIVE COVENANTS IN EMPLOYMENT AS CONSTITUTING A RESTRAINT OF TRADE.

S 931. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE. A COVENANT NOT TO COMPETE, OR NON-SOLICITATION AGREEMENT WITH RESPECT TO EITHER EMPLOYEES OR CUSTOMERS, SHALL NOT BE ENFORCEABLE AGAINST A FORMER EMPLOYEE OR AN INDEPENDENT CONTRACTOR WHO IS NO LONGER IN A CONTRACTUAL RELATIONSHIP WITH THE BUSINESS, WHEN ANY ONE OF THE FOLLOWING IS TRUE:

(A) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR HAS BEEN TERMINATED OR DISCHARGED FOR REASONS OTHER THAN MISCONDUCT.

(B) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR:

(I) IS NOT UNIQUE;

(II) DOES NOT POSSESS TRADE SECRETS OF THE BUSINESS OR MATERIAL THAT IS AKIN TO A TRADE SECRET;

(III) HAS NOT PURCHASED OR SOLD ANY PORTION OF THE BUSINESS; AND

(IV) IS NOT A LEARNED PROFESSIONAL.

(C) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS AN ATTORNEY.

(D) THE COVENANT IS UNREASONABLE IN GEOGRAPHIC EXTENT OR IN DURATION BASED ON THE CIRCUMSTANCES OF THE CASE.

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

LBD13245-02-3

S 932. BALANCING TEST. WITH RESPECT TO EMPLOYEES WHO, OR COVENANTS WHICH, ARE OUTSIDE THE CATEGORIES DEFINED IN SECTION NINE HUNDRED THIRTY-ONE OF THIS ARTICLE, SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY WHEN THE LEGITIMATE INTEREST OF THE EMPLOYER OUTWEIGHS THE EMPLOYEE'S OR INDEPENDENT CONTRACTOR'S INTEREST IN BEING ABLE TO PURSUE HIS OR HER LIVELIHOOD AND THE PUBLIC INTEREST IN FREE AND OPEN COMPETITION; AND SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY TO THE EXTENT NECESSARY TO PROTECT THE EMPLOYER'S LEGITIMATE INTEREST.

S 2. This act shall take effect immediately.