

2147--B

2015-2016 Regular Sessions

I N A S S E M B L Y

January 15, 2015

Introduced by M. of A. STECK, GOTTFRIED, FINCH, NOJAY, BRINDISI, ARROYO
-- Multi-Sponsored by -- M. of A. McLAUGHLIN, SCHIMEL, SEAWRIGHT --
read once and referred to the Committee on Labor -- recommitted to the
Committee on Labor in accordance with Assembly Rule 3, sec. 2 --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee -- again reported from said committee
with amendments, ordered reprinted as amended and recommitted to said
committee

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 33 to read
2 as follows:

3 ARTICLE 33

4 POLICY AGAINST RESTRAINT OF TRADE

5 SECTION 950. POLICY.

6 951. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE.

7 952. COVENANTS RELATING TO ATTORNEYS.

8 953. EXCEPTIONS.

9 S 950. POLICY. THE LEGISLATURE HEREBY REAFFIRMS THAT THE POLICY OF
10 THIS STATE IS TO DISFAVOR RESTRICTIVE COVENANTS IN EMPLOYMENT AS CONSTI-
11 TUTING A RESTRAINT OF TRADE.

12 S 951. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE. A COVENANT NOT TO
13 COMPETE, OR NON-SOLICITATION AGREEMENT WITH RESPECT TO EITHER EMPLOYEES
14 OR CUSTOMERS, SHALL NOT BE ENFORCEABLE AGAINST A FORMER EMPLOYEE NO
15 LONGER EMPLOYED BY A BUSINESS OR INDEPENDENT CONTRACTOR NO LONGER IN A
16 CONTRACTUAL RELATIONSHIP WITH THE BUSINESS, UNLESS (1) THE COVENANT IS
17 REASONABLE IN GEOGRAPHIC EXTENT OR IN TIME BASED ON THE CIRCUMSTANCES OF
18 THE CASE AND (2) ONE OF THE FOLLOWING IS TRUE:

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

LBD06922-04-6

1 (A) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR LEFT THE BUSINESS VOLUN-
2 TARILY OR WAS INVOLUNTARILY TERMINATED OR DISCHARGED FOR MISCONDUCT; AND
3 SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS UNIQUE AS A MATTER OF LAW. AN
4 EMPLOYEE OR INDEPENDENT CONTRACTOR IS CONSIDERED UNIQUE IF AND ONLY IF
5 HE OR SHE POSSESSES TRADE SECRETS OF THE BUSINESS OR CONFIDENTIAL MATE-
6 RIAL THAT IS AKIN TO A TRADE SECRET.

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

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

14 S 952. COVENANTS RELATING TO ATTORNEYS. ANY SUCH COVENANTS REGARDING
15 ATTORNEYS, WHETHER AS EMPLOYEES OR INDEPENDENT CONTRACTORS, ARE UNEN-
16 FORCEABLE IN LIGHT OF THE CLIENT'S RIGHT TO CHOOSE HIS OR HER OWN COUN-
17 SEL.

18 S 953. EXCEPTIONS. SUCH RESTRICTIVE COVENANT MAY STILL BE ENFORCED IF
19 THE EMPLOYER DEMONSTRATES THAT (1) THE EMPLOYEE LEFT ITS BUSINESS VOLUN-
20 TARILY OR WAS TERMINATED OR DISCHARGED FOR MISCONDUCT; AND (2) THERE ARE
21 UNUSUAL CIRCUMSTANCES UNIQUE TO THE BUSINESS AND TO THE EMPLOYEE
22 INVOLVED SUCH THAT THE EMPLOYER HAS A COMPELLING INTEREST THAT OUTWEIGHS
23 THE EMPLOYEE OR INDEPENDENT CONTRACTOR'S INTEREST IN BEING ABLE TO
24 PURSUE HIS OR HER LIVELIHOOD AND THE PUBLIC INTEREST IN FREE AND OPEN
25 COMPETITION; AND (3) SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY
26 TO THE EXTENT NECESSARY TO PROTECT THE EMPLOYER'S COMPELLING INTEREST.

27 S 2. This act shall take effect immediately.