2147--A

## 2015-2016 Regular Sessions

## IN ASSEMBLY

## 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

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:

1 Section 1. The labor law is amended by adding a new article 33 to read 2 as follows:

ARTICLE 33

POLICY AGAINST RESTRAINT OF TRADE

5 SECTION 950. POLICY.

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951. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE.

952. EXCEPTIONS.

- S 950. 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 951. 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 NO LONGER EMPLOYED BY A BUSINESS OR INDEPENDENT CONTRACTOR NO LONGER IN A CONTRACTUAL RELATIONSHIP WITH THE BUSINESS, UNLESS (1) THE COVENANT IS 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

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

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11 12 EMPLOYEE OR INDEPENDENT CONTRACTOR IS CONSIDERED UNIQUE IF AND ONLY IF HE OR SHE POSSESSES TRADE SECRETS OF THE BUSINESS OR CONFIDENTIAL MATE-RIAL THAT IS AKIN TO A TRADE SECRET.

- (B) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR HAS PURCHASED OR SOLD ANY PORTION OF THE BUSINESS. SUCH EMPLOYEES ARE DEEMED TO HAVE LEFT THE BUSINESS VOLUNTARILY.
- (C) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS A LEARNED PROFESSIONAL. PROVIDED, HOWEVER, THAT COVENANTS INVOLVING LEARNED PROFESSIONALS ARE NOT ENFORCEABLE IF SUCH LEARNED PROFESSIONAL WAS INVOLUNTARILY TERMINATED OR DISCHARGED FOR REASONS OTHER THAN MISCONDUCT.
  - (D) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS AN ATTORNEY.
- 952. EXCEPTIONS. SUCH RESTRICTIVE COVENANT MAY STILL BE ENFORCED IF THE EMPLOYER DEMONSTRATES THAT (1) THE EMPLOYEE LEFT ITS BUSINESS VOLUN-13 14 TARILY OR WAS TERMINATED OR DISCHARGED FOR MISCONDUCT; AND (2) THERE ARE 15 UNUSUAL CIRCUMSTANCES UNIQUE TO THE BUSINESS AND TO THE **EMPLOYEE** INVOLVED SUCH THAT THE EMPLOYER HAS A COMPELLING INTEREST THAT OUTWEIGHS 16 17 EMPLOYEE OR INDEPENDENT CONTRACTOR'S INTEREST IN BEING ABLE TO PURSUE HIS OR HER LIVELIHOOD AND THE PUBLIC INTEREST IN FREE AND OPEN 18 19 COMPETITION; AND (3) SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY TO THE EXTENT NECESSARY TO PROTECT THE EMPLOYER'S COMPELLING INTEREST. 20
- 21 S 2. This act shall take effect immediately.