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

4447

2015-2016 Regular Sessions

I N S E N A T E

March 20, 2015

Introduced by Sen. LANZA -- 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. EXCEPTIONS.

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 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 THE CASE AND (2) ONE OF THE FOLLOWING IS TRUE:

(A) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR LEFT THE BUSINESS VOLUNTARILY OR WAS INVOLUNTARILY TERMINATED OR DISCHARGED FOR MISCONDUCT; AND SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS UNIQUE AS A MATTER OF LAW. AN EMPLOYEE OR INDEPENDENT CONTRACTOR IS CONSIDERED UNIQUE IF AND ONLY IF HE OR SHE POSSESSES TRADE SECRETS OF THE BUSINESS OR CONFIDENTIAL MATERIAL 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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(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.

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

S 2. This act shall take effect immediately.