

4447--A

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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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:

3 ARTICLE 33

4 POLICY AGAINST RESTRAINT OF TRADE

5 SECTION 950. POLICY.

6 951. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE.

7 952. EXCEPTIONS.

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

11 S 951. PARTICULAR RESTRAINTS OF TRADE UNENFORCEABLE. A COVENANT NOT TO
12 COMPETE, OR NON-SOLICITATION AGREEMENT WITH RESPECT TO EITHER EMPLOYEES
13 OR CUSTOMERS, SHALL NOT BE ENFORCEABLE AGAINST A FORMER EMPLOYEE NO
14 LONGER EMPLOYED BY A BUSINESS OR INDEPENDENT CONTRACTOR NO LONGER IN A
15 CONTRACTUAL RELATIONSHIP WITH THE BUSINESS, UNLESS (1) THE COVENANT IS
16 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
21 EMPLOYEE OR INDEPENDENT CONTRACTOR IS CONSIDERED UNIQUE IF AND ONLY IF

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

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1 HE OR SHE POSSESSES TRADE SECRETS OF THE BUSINESS OR CONFIDENTIAL MATE-
2 RIAL THAT IS AKIN TO A TRADE SECRET.

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

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

10 (D) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS AN ATTORNEY.

11 S 952. EXCEPTIONS. SUCH RESTRICTIVE COVENANT MAY STILL BE ENFORCED IF
12 THE EMPLOYER DEMONSTRATES THAT (1) THE EMPLOYEE LEFT ITS BUSINESS VOLUN-
13 TARILY OR WAS TERMINATED OR DISCHARGED FOR MISCONDUCT; AND (2) THERE ARE
14 UNUSUAL CIRCUMSTANCES UNIQUE TO THE BUSINESS AND TO THE EMPLOYEE
15 INVOLVED SUCH THAT THE EMPLOYER HAS A COMPELLING INTEREST THAT OUTWEIGHS
16 THE EMPLOYEE OR INDEPENDENT CONTRACTOR'S INTEREST IN BEING ABLE TO
17 PURSUE HIS OR HER LIVELIHOOD AND THE PUBLIC INTEREST IN FREE AND OPEN
18 COMPETITION; AND (3) SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY
19 TO THE EXTENT NECESSARY TO PROTECT THE EMPLOYER'S COMPELLING INTEREST.

20 S 2. This act shall take effect immediately.