

# STATE OF NEW YORK

2581

2017-2018 Regular Sessions

## IN ASSEMBLY

January 20, 2017

Introduced by M. of A. STECK -- read once and referred 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:

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

##### Section 950. Policy.

951. Particular restraints of trade unenforceable.

952. Covenants relating to attorneys.

953. Exceptions.

9 § 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 § 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:

19 (a) Such employee or independent contractor left the business volun-  
20 tarily or was involuntarily terminated or discharged for misconduct; and  
21 such employee or independent contractor is unique as a matter of law. An  
22 employee or independent contractor is considered unique if and only if  
23 he or she possesses trade secrets of the business or confidential mate-  
24 rial 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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1     (b) Such employee or independent contractor has purchased or sold any  
2     portion of the business. Such employees are deemed to have left the  
3     business voluntarily.

4     (c) Such employee or independent contractor is a learned professional.  
5     Provided, however, that covenants involving learned professionals are  
6     not enforceable if such learned professional was involuntarily termi-  
7     nated or discharged for reasons other than misconduct.

8     § 952. Covenants relating to attorneys. Any such covenants regarding  
9     attorneys, whether as employees or independent contractors, are unen-  
10    forceable in light of the client's right to choose his or her own coun-  
11    sel.

12    § 953. Exceptions. Such restrictive covenant may still be enforced if  
13    the employer demonstrates that (1) the employee left its business volun-  
14    tarily or was terminated or discharged for misconduct; and (2) there are  
15    unusual circumstances unique to the business and to the employee  
16    involved such that the employer has a compelling interest that outweighs  
17    the employee or independent contractor's interest in being able to  
18    pursue his or her livelihood and the public interest in free and open  
19    competition; and (3) such restrictive covenants shall be enforced only  
20    to the extent necessary to protect the employer's compelling interest.

21    § 2. This act shall take effect immediately.