

4610

2017-2018 Regular Sessions

I N S E N A T E

February 21, 2017

Introduced by Sen. SAVINO -- 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 prohibiting employers from requiring low-wage employees to enter into covenants not to compete and requiring employers to notify potential employees of any requirement to enter into a covenant not to compete

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "New York  
2 State mobility and opportunity for vulnerable employees act" or the "NY  
3 MOVE act".

4 § 2. The labor law is amended by adding a new article 33 to read as  
5 follows:

6 ARTICLE 33

7 NEW YORK STATE MOBILITY AND OPPORTUNITY FOR VULNERABLE EMPLOYEES ACT  
8 SECTION 950. DEFINITIONS.

9 951. PROHIBITING COVENANTS NOT TO COMPETE FOR LOW-WAGE EMPLOY-  
10 EES.

11 952. DISCLOSURE REQUIREMENT FOR COVENANTS NOT TO COMPETE.

12 953. ENFORCEMENT.

13 § 950. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS  
14 SHALL HAVE THE FOLLOWING MEANINGS:

15 1. "COMMERCE" HAS THE MEANING GIVEN SUCH TERM IN SECTION THREE OF THE  
16 FAIR LABOR STANDARDS ACT OF 1938 (29 U.S.C. 203).

17 2. "COVENANT NOT TO COMPETE" MEANS AN AGREEMENT:

18 (A) BETWEEN AN EMPLOYEE AND EMPLOYER THAT RESTRICTS SUCH EMPLOYEE FROM  
19 PERFORMING:

20 (I) ANY WORK FOR ANOTHER EMPLOYER FOR A SPECIFIED PERIOD OF TIME;

21 (II) ANY WORK IN A SPECIFIED GEOGRAPHICAL AREA; OR

22 (III) WORK FOR ANOTHER EMPLOYER THAT IS SIMILAR TO SUCH EMPLOYEE'S  
23 WORK FOR THE EMPLOYER INCLUDED AS A PARTY TO THE AGREEMENT; AND

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

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1 (B) THAT IS ENTERED INTO AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

2 3. "EMPLOYEE", "EMPLOYER", "ENTERPRISE", "ENTERPRISE ENGAGED IN  
3 COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE", AND "GOODS" HAVE  
4 THE MEANINGS GIVEN SUCH TERMS IN SECTION THREE OF THE FAIR LABOR STAND-  
5 ARDS ACT OF 1938 (29 U.S.C. 203).

6 4. "LIVABLE HOURLY RATE" MEANS:

7 (A) FOR THE FISCAL YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, THE  
8 GREATER OF:

9 (I) FIFTEEN DOLLARS PER HOUR; OR

10 (II) THE HOURLY RATE EQUAL TO THE MINIMUM WAGE REQUIRED BY THE APPLI-  
11 CABLE STATE OR LOCAL MINIMUM WAGE LAW; AND

12 (B) FOR EACH SUCCEEDING FISCAL YEAR, THE GREATER OF:

13 (I) THE ADJUSTED AMOUNT DESCRIBED IN SUBDIVISION THREE OF SECTION NINE  
14 HUNDRED FIFTY-ONE OF THIS ARTICLE; OR

15 (II) THE HOURLY RATE EQUAL TO THE MINIMUM WAGE REQUIRED BY THE APPLI-  
16 CABLE STATE OR LOCAL MINIMUM WAGE LAW.

17 5. "LOW-WAGE EMPLOYEE":

18 (A) MEANS AN EMPLOYEE WHO, EXCLUDING ANY OVERTIME COMPENSATION  
19 REQUIRED UNDER SECTION SEVEN OF THE FAIR LABOR STANDARDS ACT OF 1938 (29  
20 U.S.C. 207) OR UNDER AN APPLICABLE STATE LAW, RECEIVES FROM THE APPLICA-  
21 BLE EMPLOYER:

22 (I) AN HOURLY COMPENSATION THAT IS LESS THAN THE LIVEABLE HOURLY RATE;  
23 OR

24 (II) AN ANNUAL COMPENSATION THAT IS EQUAL TO OR LESS THAN:

25 (A) FOR THE FISCAL YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, THIR-  
26 TY-ONE THOUSAND TWO HUNDRED DOLLARS PER YEAR; AND

27 (B) FOR EACH SUCCEEDING FISCAL YEAR, THE ADJUSTED AMOUNT DESCRIBED IN  
28 SUBDIVISION THREE OF SECTION NINE HUNDRED FIFTY-ONE OF THIS ARTICLE; AND

29 (B) DOES NOT INCLUDE ANY SALARIED EMPLOYEE WHO RECEIVES FROM THE  
30 APPLICABLE EMPLOYER COMPENSATION THAT, FOR TWO CONSECUTIVE MONTHS, IS  
31 GREATER THAN:

32 (I) FOR THE FISCAL YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, FIVE  
33 THOUSAND DOLLARS; AND

34 (II) FOR EACH SUCCEEDING FISCAL YEAR, THE ADJUSTED AMOUNT DESCRIBED IN  
35 SUBDIVISION THREE OF SECTION NINE HUNDRED FIFTY-ONE OF THIS ARTICLE.

36 § 951. PROHIBITING COVENANTS NOT TO COMPETE FOR LOW-WAGE EMPLOYEES. 1.  
37 NO EMPLOYER SHALL ENTER INTO A COVENANT NOT TO COMPETE WITH ANY LOW-WAGE  
38 EMPLOYEE OF SUCH EMPLOYER, WHO IN ANY WORK WEEK IS ENGAGED IN COMMERCE  
39 OR IN THE PRODUCTION OF GOODS FOR COMMERCE (OR IS EMPLOYED IN AN ENTER-  
40 PRISE ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE).

41 2. AN EMPLOYER WHO EMPLOYS ANY LOW-WAGE EMPLOYEE, WHO IN ANY WORK WEEK  
42 IS ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE (OR IS  
43 EMPLOYED IN AN ENTERPRISE ENGAGED IN COMMERCE OR IN THE PRODUCTION OF  
44 GOODS FOR COMMERCE), SHALL POST NOTICE OF THE PROVISIONS OF THIS ARTICLE  
45 IN A CONSPICUOUS PLACE ON THE PREMISES OF SUCH EMPLOYER.

46 3. (A) FOR EACH FISCAL YEAR AFTER THE FISCAL YEAR OF THE EFFECTIVE  
47 DATE OF THIS ARTICLE, THE COMMISSIONER SHALL ADJUST EACH AMOUNT IN  
48 EFFECT UNDER SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF  
49 SECTION NINE HUNDRED FIFTY OF THIS ARTICLE, CLAUSE (B) OF SUBPARAGRAPH  
50 (II) OF PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION NINE HUNDRED FIFTY  
51 OF THIS ARTICLE, OR SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION  
52 FIVE OF SECTION NINE HUNDRED FIFTY OF THIS ARTICLE FOR INFLATION BY  
53 INCREASING EACH SUCH AMOUNT, AS IN EFFECT FOR THE PRECEDING FISCAL YEAR,  
54 BY THE ANNUAL PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX FOR URBAN  
55 WAGE EARNERS AND CLERICAL WORKERS (UNITED STATES CITY AVERAGE, ALL

1 ITEMS, NOT SEASONALLY ADJUSTED), OR ITS SUCCESSOR PUBLICATION, AS DETER-  
2 MINED BY THE BUREAU OF LABOR STATISTICS.

3 (B) THE AMOUNTS ADJUSTED UNDER PARAGRAPH (A) OF THIS SUBDIVISION SHALL  
4 BE ROUNDED TO THE NEAREST MULTIPLE OF \$0.05.

5 § 952. DISCLOSURE REQUIREMENT FOR COVENANTS NOT TO COMPETE. IN ORDER  
6 FOR AN EMPLOYER TO REQUIRE AN EMPLOYEE, WHO IN ANY WORK WEEK IS ENGAGED  
7 IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE (OR IS EMPLOYED  
8 IN AN ENTERPRISE ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR  
9 COMMERCE) AND IS NOT A LOW-WAGE EMPLOYEE, TO ENTER INTO A COVENANT NOT  
10 TO COMPETE, THE EMPLOYER SHALL, PRIOR TO THE EMPLOYMENT OF SUCH EMPLOYEE  
11 AND AT THE BEGINNING OF THE PROCESS FOR HIRING SUCH EMPLOYEE, HAVE  
12 DISCLOSED TO SUCH EMPLOYEE THE REQUIREMENT FOR ENTERING INTO SUCH COVEN-  
13 ANT.

14 § 953. ENFORCEMENT. 1. THE COMMISSIONER SHALL HAVE THE POWER TO  
15 RECEIVE, INVESTIGATE, ATTEMPT TO RESOLVE, AND ENFORCE A COMPLAINT OF A  
16 VIOLATION OF SECTIONS NINE HUNDRED FIFTY-ONE AND NINE HUNDRED FIFTY-TWO  
17 OF THIS ARTICLE, SUBJECT TO SUBDIVISION TWO OF THIS SECTION.

18 2. (A) THE COMMISSIONER SHALL IMPOSE A CIVIL FINE:

19 (I) WITH RESPECT TO ANY EMPLOYER WHO VIOLATES SUBDIVISION ONE OF  
20 SECTION NINE HUNDRED FIFTY-ONE OR SECTION NINE HUNDRED FIFTY-TWO OF THIS  
21 ARTICLE, AN AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH EMPLOYEE  
22 WHO WAS THE SUBJECT OF SUCH VIOLATION; AND

23 (II) WITH RESPECT TO ANY EMPLOYER WHO VIOLATES SUBDIVISION TWO OF  
24 SECTION NINE HUNDRED FIFTY-ONE OF THIS ARTICLE, AN AMOUNT NOT TO EXCEED  
25 FIVE THOUSAND DOLLARS.

26 (B) IN DETERMINING THE AMOUNT OF ANY CIVIL FINE UNDER THIS SECTION,  
27 THE COMMISSIONER SHALL CONSIDER THE APPROPRIATENESS OF THE FINE TO THE  
28 SIZE OF THE EMPLOYER SUBJECT TO SUCH FINE AND THE GRAVITY OF THE APPLI-  
29 CABLE VIOLATION.

30 § 3. This act shall take effect immediately and shall apply to employ-  
31 ees hired on and after such date.