STATE OF NEW YORK

6425--B

2021-2022 Regular Sessions

IN SENATE

April 28, 2021

Introduced by Sen. RYAN -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to prohibiting non-compete agreements and certain restrictive covenants

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 section 191-d to read as follows:

§ 191-d. Non-compete agreements. 1. For the purposes of this section, the term:

(a) "non-compete agreement" means any agreement, or clause contained in any employment contract, between an employer and an employee that prohibits or restricts such employee from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement; and

(b) "covered employee" means any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person.

2. No employer or its agent, or the officer or agent of any corporation, partnership, or limited liability company, shall seek, require, demand or accept a non-compete agreement from any covered employee.

3. Every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void. For all covered employees, no employer or his or her agent, or the officer or agent of any corporation, partnership, limited liability

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

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company, shall seek, require, demand or accept a non-compete agreement from any employee.

4. (a) A covered employee, may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated this section. An employee shall bring such action within two years of the later of: (i) when the prohibited non-compete agreement was signed; (ii) when the covered employee learns of the prohibited non-compete agreement; (iii) when the employment or contractual relationship is terminated; or (iv) when the employer takes any step to enforce the non-compete agreement. The court shall have jurisdiction to void any such non-compete agreement and to order all appropriate relief, including enjoining the conduct of any person or employer; ordering payment of liquidated damages; and awarding lost compensation, damages, reasonable attorneys' fees and costs.

(b) For the purposes of this subdivision, liquidated damages shall be calculated as an amount not more than ten thousand dollars. The court shall award liquidated damages to every employee affected under this section, in addition to any other remedies permitted by this section.

5. Nothing in this section shall be construed or interpreted as affecting any other provision of federal, state, or local law, rule, or regulation relating to the ability of an employer to enter into an employment contract or other written agreement with a prospective or current employee that establishes a minimum duration of service or prohibits disclosure of trade secrets, disclosure of private and personal client information, or solicitation of clients of the employer that the employee learned about during employment.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law and shall be applicable to contracts entered into or modified on or after such effective date.