

STATE OF NEW YORK

6425

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

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:

1 Section 1. The labor law is amended by adding a new section 191-d to
2 read as follows:

3 § 191-d. Non-compete agreements. 1. For the purposes of this section,
4 the term:

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

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

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

18 3. Every contract by which anyone is restrained from engaging in a
19 lawful profession, trade, or business of any kind is to that extent
20 void. For all covered employees, no employer or his or her agent, or the
21 officer or agent of any corporation, partnership, limited liability
22 company, shall seek, require, demand or accept a non-compete agreement
23 from any employee.

24 4. (a) A covered employee, may bring a civil action in a court of
25 competent jurisdiction against any employer or persons alleged to have

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

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1 violated this section. An employee shall bring such action within two
2 years of the later of: (i) when the prohibited non-compete agreement was
3 signed; (ii) when the employee learns of the prohibited non-compete
4 agreement; (iii) when the employment relationship is terminated; or (iv)
5 when the employer takes any step to enforce the non-compete agreement.
6 The court shall have jurisdiction to void any such non-compete agreement
7 and to order all appropriate relief, including enjoining the conduct of
8 any person or employer; ordering payment of liquidated damages; and
9 awarding lost compensation, damages, reasonable attorneys' fees and
10 costs.

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

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

24 § 3. This act shall take effect on the one hundred eightieth day after
25 it shall have become a law.