STATE OF NEW YORK

1278--B

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. JOYNER, BORES, BURDICK, SIMON, ARDILA, REYES, TAYLOR, GIBBS, LUNSFORD, WALKER, L. ROSENTHAL -- Multi-Sponsored by -- M. of A. SEAWRIGHT -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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 agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement; and

(b) "covered individual" 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, limited liability company, or other entity, shall seek, require, demand or accept a non-compete agreement from any covered individual.

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

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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 individuals, no employer or its agent, or the officer or agent of any corporation, partnership, limited liability company, or other entity shall seek, require, demand or accept a non-compete agreement from any covered individual.

4. (a) A covered individual, may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated this section. A covered individual shall bring such action within two years of the later of: (i) when the prohibited non-compete agreement was signed; (ii) when the covered individual 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 covered individual 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 agreement with a prospective or current covered individual that establishes a fixed term of service or prohibits disclosure of trade secrets, disclosure of confidential and proprietary client information, or solicitation of clients of the employer that the covered individual learned about during employment, provided that such agreement does not otherwise restrict competition in violation of this section.

6. Notwithstanding section two hundred two-k of this chapter, the provisions of this section shall apply to broadcast employees as defined in section two hundred two-k of this chapter; provided, however, in the event that any clause, section, sentence, paragraph, subdivision, section, or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, then section two hundred two-k shall remain in effect unless similarly adjudged to be invalid.

§ 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.