

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:

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

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

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

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1 3. Every contract by which anyone is restrained from engaging in a
2 lawful profession, trade, or business of any kind is to that extent
3 void. For all covered individuals, no employer or its agent, or the
4 officer or agent of any corporation, partnership, limited liability
5 company, or other entity shall seek, require, demand or accept a non-
6 compete agreement from any covered individual.

7 4. (a) A covered individual, may bring a civil action in a court of
8 competent jurisdiction against any employer or persons alleged to have
9 violated this section. A covered individual shall bring such action
10 within two years of the later of: (i) when the prohibited non-compete
11 agreement was signed; (ii) when the covered individual learns of the
12 prohibited non-compete agreement; (iii) when the employment or contrac-
13 tual relationship is terminated; or (iv) when the employer takes any
14 step to enforce the non-compete agreement. The court shall have juris-
15 isdiction to void any such non-compete agreement and to order all appro-
16 priate relief, including enjoining the conduct of any person or employ-
17 er; ordering payment of liquidated damages; and awarding lost
18 compensation, damages, reasonable attorneys' fees and costs.

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

24 5. Nothing in this section shall be construed or interpreted as
25 affecting any other provision of federal, state, or local law, rule, or
26 regulation relating to the ability of an employer to enter into an
27 agreement with a prospective or current covered individual that estab-
28 lishes a fixed term of service or prohibits disclosure of trade secrets,
29 disclosure of confidential and proprietary client information, or solici-
30 tation of clients of the employer that the covered individual learned
31 about during employment, provided that such agreement does not otherwise
32 restrict competition in violation of this section.

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

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

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