

SENATE BILL NO. 222—SENATOR KIECKHEFER

FEBRUARY 27, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Provides that certain noncompete provisions in employment contracts are void and unenforceable. (BDR 53-799)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to labor, providing that certain noncompete provisions in employment contracts are against public policy, void and unenforceable; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The “anti-blacklisting” provisions of existing law prohibit a person or business
2 from doing anything intended to prevent any former employee of the person from
3 obtaining employment elsewhere in this State. (NRS 613.200) However, this
4 provision of existing law does not prohibit an employer, or any agent or officer of
5 an employer, from negotiating, executing and enforcing a reasonable
6 noncompetition covenant, which is an agreement between an employer and an
7 employee of the employer that prohibits the employee from engaging in
8 competition with the employer or becoming employed with a competitor of the
9 employer for a specified period. (NRS 613.200; *Jones v. Deeter*, 112 Nev. 291, 296
10 (1996))

11 The Nevada Supreme Court has held that a noncompetition covenant “is in
12 restraint of trade and will not be enforced in accordance with its terms unless [the
13 noncompetition covenant] is reasonable.” (*Hansen v. Edwards*, 83 Nev. 189, 191
14 (1967)) According to the Nevada Supreme Court, a noncompetition covenant is
15 reasonable if the restraint set forth in the covenant is not “greater than is required
16 for the protection of the person for whose benefit the restraint is imposed” and does
17 not impose “undue hardship upon the person restricted.” (*Golden Road Motor Inn,
18 Inc. v. Islam*, 132 Nev. Adv. Op. 49 (2016)) In making this determination, the
19 Nevada Supreme Court considers the duration of the restraint imposed on the
20 employee, the territory in which the employee is restrained from employment and
21 the type of employment which the employee is restrained from pursuing. (*Hansen*,
22 83 Nev. at 191-92; *Jones*, 112 Nev. at 296; *Cameo, Inc. v. Baker*, 113 Nev. 512,
23 519-20 (1997); *Golden Road Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49
24 (2016))



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25 This bill enacts statutory provisions relating to noncompetition covenants.
26 **Section 1** of this bill provides that a noncompetition covenant is enforceable only
27 if: (1) the covenant satisfies the standard established by the Nevada Supreme Court
28 to determine whether a noncompetition covenant is reasonable and, thus,
29 enforceable; (2) the employee had access to certain confidential information of the
30 employer; and (3) the covenant is disclosed to the employee before the employee
31 begins his or her employment. However, under **section 1**, a noncompetition
32 covenant is void and unenforceable if the noncompetition covenant prohibits an
33 employee from competing with or becoming employed by a competitor of his or
34 her employer for a period of more than 1 year after the termination of the
35 employee's employment with the employer. Under **section 1**, any period during
36 which the employee is paid his or her salary, benefits or other compensation must
37 not count toward the 1-year period. **Section 1** further provides that an employer
38 who negotiates, executes or attempts to enforce a noncompetition covenant does
39 not violate the "anti-blacklisting" provisions of existing law.

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

1 **Section 1.** Chapter 613 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. A noncompetition covenant is void and unenforceable*
4 *unless the employee to whom the noncompetition covenant applies*
5 *has or had access to a protectable interest of the employer during*
6 *the ordinary course of his or her employment and the*
7 *noncompetition covenant:*

8 *(a) Is supported by valuable consideration;*

9 *(b) Does not impose any restraint that is greater than is*
10 *required for the protection of the employer for whose benefit the*
11 *restraint is imposed;*

12 *(c) Does not impose an undue hardship upon the employee;*
13 *and*

14 *(d) Was disclosed to the employee before he or she acted*
15 *materially in justifiable reliance on an offer of or commenced*
16 *applicable employment.*

17 *2. Except as otherwise provided in subsection 3, for the*
18 *purposes of subsection 1, a noncompetition covenant that*
19 *prohibits an employee from pursuing a similar vocation in*
20 *competition with or becoming employed by a competitor of his or*
21 *her employer for a period of more than 1 year after the*
22 *termination of the employment of the employee:*

23 *(a) Must be deemed to impose a restraint that is greater than is*
24 *required for the protection of the employer for whose benefit the*
25 *restraint is imposed and impose an undue hardship upon the*
26 *employee; and*

27 *(b) Is against public policy and is void and unenforceable.*



1 3. Any period during which the employer is paying the
2 employee's salary, benefits or other equivalent compensation,
3 including, without limitation, severance pay, must not count
4 toward the period set forth in subsection 1.

5 4. An employer in this State who negotiates, executes or
6 attempts to enforce a noncompetition covenant that is void and
7 unenforceable under this section does not violate NRS 613.200.

8 5. As used in this section:

9 (a) "Noncompetition covenant" means an agreement between
10 an employer and an employee that, upon termination of the
11 employment of the employee, prohibits the employee from
12 pursuing a similar vocation in competition with or becoming
13 employed by a competitor of the employer.

14 (b) "Protectable interest" means:

15 (1) Any trade secrets, business methods, lists of customers,
16 secret formulas or processes or any other confidential information
17 that could reasonably be expected to provide an advantage to a
18 competitor; or

19 (2) Substantial relationships with specific prospective or
20 existing customers.

21 **Sec. 2.** NRS 613.200 is hereby amended to read as follows:

22 613.200 1. Except as otherwise provided in this section ~~†~~
23 and section 1 of this act, any person, association, company or
24 corporation within this State, or any agent or officer on behalf of the
25 person, association, company or corporation, who willfully does
26 anything intended to prevent any person who for any cause left or
27 was discharged from his, her or its employ from obtaining
28 employment elsewhere in this State is guilty of a gross misdemeanor
29 and shall be punished by a fine of not more than \$5,000.

30 2. In addition to any other remedy or penalty, the Labor
31 Commissioner may impose against each culpable party an
32 administrative penalty of not more than \$5,000 for each such
33 violation.

34 3. If a fine or an administrative penalty is imposed pursuant to
35 this section, the costs of the proceeding, including investigative
36 costs and attorney's fees, may be recovered by the Labor
37 Commissioner.

38 4. The provisions of this section do not prohibit a person,
39 association, company, corporation, agent or officer from
40 negotiating, executing and enforcing an agreement with an
41 employee of the person, association, company or corporation which,
42 upon termination of the employment, prohibits the employee from ~~†~~

43 ~~—(a) Pursuing a similar vocation in competition with or becoming~~
44 ~~employed by a competitor of the person, association, company or~~
45 ~~corporation; or~~



1 ~~—(b) Disclosing~~ *disclosing* any trade secrets, business methods,
2 lists of customers, secret formulas or processes or confidential
3 information learned or obtained during the course of his or her
4 employment with the person, association, company or corporation,
5 ~~{→}~~ if the agreement is supported by valuable consideration and is
6 otherwise reasonable in its scope and duration.
7 **Sec. 3.** The amendatory provisions of this act do not apply to a
8 noncompetition covenant entered into before July 1, 2017, unless
9 the noncompetition covenant is amended or modified after that date.
10 **Sec. 4.** This act becomes effective on July 1, 2017.

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