

Senate Bill 248

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes arbitration agreement between employer and employee void and unenforceable under certain conditions. Makes noncompetition agreement between employer and employee void and unenforceable under certain conditions.

A BILL FOR AN ACT

1
2 Relating to employment agreements; creating new provisions; and amending ORS 36.620 and 653.295.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 36.620 is amended to read:

5 36.620. (1) An agreement contained in a record to submit to arbitration any existing or subse-
6 quent controversy arising between the parties to the agreement is valid, enforceable and irrevocable
7 except upon a ground that exists at law or in equity for the revocation of a contract.

8 (2) Subject to ORS 36.625 (8), the court shall decide whether an agreement to arbitrate exists
9 or a controversy is subject to an agreement to arbitrate.

10 (3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled.

11 (4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy
12 is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final
13 resolution of the issue by the court, unless the court otherwise orders.

14 **(5) A written arbitration agreement entered into between an employer and employee and**
15 **otherwise valid under subsection (1) of this section is void and may not be enforced by the**
16 **court unless:**

17 **(a) The employer informs the employee at the time the offer of employment is first**
18 **communicated to the employee that an arbitration agreement is required as a condition of**
19 **employment; or**

20 **(b) The arbitration agreement is entered into upon a subsequent bona fide advancement**
21 **of the employee by the employer.**

22 **SECTION 2.** ORS 653.295 is amended to read:

23 653.295. (1) A noncompetition agreement entered into between an employer and employee is void
24 and may not be enforced by any court in this state [*unless the agreement is entered into upon the*]:

25 [*(a) Initial employment of the employee with the employer; or*]

26 [*(b) Subsequent bona fide advancement of the employee with the employer.*]

27 **(a)(A) Unless the employer informs the employee at the time the offer of employment is**
28 **first communicated to the employee that a noncompetition agreement is required as a con-**
29 **dition of employment; or**

30 **(B) Unless the noncompetition agreement is entered into upon a subsequent bona fide**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **advancement of the employee by the employer.**

2 **(b) If the employee is discharged or laid off by the employer for a reason other than**
 3 **misconduct connected with work. As used in this paragraph, “misconduct connected with**
 4 **work” has the meaning applied to that term under ORS 657.176.**

5 (2) Subsection (1) of this section applies only to noncompetition agreements made in the context
 6 of an employment relationship or contract and not otherwise.

7 (3)(a) Subsection [(1)(a)] **(1)(a)(A)** of this section applies only to noncompetition agreements en-
 8 tered into after July 22, 1977.

9 (b) Subsection [(1)(b)] **(1)(a)(B)**, subsections (4) and (5) and subsection (6)(a) of this section apply
 10 to employment relationships and bonus restriction agreements in effect or entered into after October
 11 15, 1983.

12 **(c) Subsection (1)(b) of this section applies only to noncompetition agreements entered**
 13 **into on or after the effective date of this 2007 Act.**

14 (4) Subsection (1) of this section does not apply to bonus restriction agreements, which are
 15 lawful agreements that may be enforced by the courts in this state.

16 (5) Nothing in this section restricts the right of any person to protect trade secrets or other
 17 proprietary information by injunction or any other lawful means under other applicable laws.

18 (6) As used in this section:

19 (a) “Bonus restriction agreement” means an agreement, written or oral, express or implied, be-
 20 tween an employer and employee under which:

21 (A) Competition by the employee with the employer is limited or restrained after termination
 22 of employment, but the restraint is limited to a period of time, a geographic area and specified ac-
 23 tivities, all of which are reasonable in relation to the services described in subparagraph (B) of this
 24 paragraph;

25 (B) The services performed by the employee pursuant to the agreement include substantial in-
 26 volvement in management of the employer’s business, personal contact with customers, knowledge
 27 of customer requirements related to the employer’s business or knowledge of trade secrets or other
 28 proprietary information of the employer; and

29 (C) The penalty imposed on the employee for competition against the employer is limited to
 30 forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

31 (b) “Employee” and “employer” have the meanings given those terms in ORS 652.310.

32 (c) “Noncompetition agreement” means an agreement, written or oral, express or implied, be-
 33 tween an employer and employee under which the employee agrees that the employee, either alone
 34 or as an employee of another person, will not compete with the employer in providing products,
 35 processes or services that are similar to the employer’s products, processes or services for a period
 36 of time or within a specified geographic area after termination of employment.

37 **SECTION 3. The amendments to ORS 36.620 by section 1 of this 2007 Act apply only to**
 38 **arbitration agreements entered into on or after the effective date of this 2007 Act.**

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