

# Senate Bill 616

Sponsored by Senator VERGER; Senators AVAKIAN, DEVLIN, GORDLY, MONNES ANDERSON, MONROE, MORRISETTE, WALKER, Representatives BARKER, BARNHART, BEYER, BUCKLEY, GALIZIO, GREENLICK, HOLVEY, KOMP, MERKLEY, ROBLAN, ROSENBAUM, SCHAUFLEER, SHIELDS, TOMEI, WITT (at the request of Bureau of Labor and Industries)

## 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 otherwise valid noncompetition agreement between employer and employee void and unenforceable if employee is laid off by employer.

## A BILL FOR AN ACT

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

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

4 **SECTION 1.** ORS 653.295 is amended to read:

5 653.295. (1) A noncompetition agreement entered into between an employer and employee is void  
6 and may not be enforced by *[any court in]* **a court of** this state unless the agreement is entered into  
7 upon the:

8 (a) Initial employment of the employee with the employer; or

9 (b) Subsequent bona fide advancement of the employee with the employer.

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

12 (3)(a) Subsection (1)(a) of this section applies only to noncompetition agreements entered into  
13 after July 22, 1977.

14 (b) *[Subsection (1)(b), subsections (4) and (5) and subsection (6)(a)]* **Subsections (1)(b), (4), (5)**  
15 **and (7)(a)** of this section apply to employment relationships and bonus restriction agreements in  
16 effect or entered into after October 15, 1983.

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

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

21 **(6) A noncompetition agreement entered into between an employer and employee under**  
22 **subsection (1) of this section is void and may not be enforced by a court of this state if the**  
23 **employee is laid off by the employer.**

24 *[(6)]* (7) As used in this section:

25 (a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, be-  
26 tween an employer and employee under which:

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

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

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

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

8 (c) **“Laid off” means the permanent termination of an employment relationship for rea-  
9 sons that are beyond the employee’s control and that do not reflect discredit upon the em-  
10 ployee. Reasons for a layoff include, but are not limited to, the elimination of the employee’s  
11 position, a lack of available funding or work, a reduction in the size of the workforce and  
12 changes in the workplace that affect staffing needs.**

13 [(c)] (d) “Noncompetition agreement” means an agreement, written or oral, express or implied,  
14 between an employer and employee under which the employee agrees that the employee, either alone  
15 or as an employee of another person, will not compete with the employer in providing products,  
16 processes or services that are similar to the employer’s products, processes or services for a period  
17 of time or within a specified geographic area after termination of employment.

18 **SECTION 2. The amendments to ORS 653.295 by section 1 of this 2007 Act apply to non-  
19 competition agreements entered into on or after the effective date of this 2007 Act.**

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