

# House Bill 2903

Sponsored by Representatives CAMERON, GILLIAM; Representatives BERGER, BRUUN, ESQUIVEL, GARRARD, GILMAN, HANNA, KRIEGER, RICHARDSON, THATCHER, THOMPSON, WEIDNER, WHISNANT, WINGARD

## 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**.

Reduces to 72 hours minimum time before first day of employment that employer is required to notify employee in written employment offer that arbitration agreement or noncompetition agreement is required as condition of employment.

## 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 other-  
15 wise valid under subsection (1) of this section is voidable and may not be enforced by a court unless:

16 (a) The employer informs the employee in a written employment offer received by the employee  
17 at least [*two weeks*] **72 hours** before the first day of the employee's employment that an arbitration  
18 agreement is required as a condition of employment; or

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

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

22 653.295. (1) A noncompetition agreement entered into between an employer and employee is  
23 voidable and may not be enforced by a court of this state unless:

24 (a)(A) The employer informs the employee in a written employment offer received by the em-  
25 ployee at least [*two weeks*] **72 hours** before the first day of the employee's employment that a non-  
26 competition agreement is required as a condition of employment; or

27 (B) The noncompetition agreement is entered into upon a subsequent bona fide advancement of  
28 the employee by the employer;

29 (b) The employee is a person described in ORS 653.020 (3);

30 (c) The employer has a protectable interest. As used in this paragraph, an employer has a

**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 protectable interest when the employee:

2 (A) Has access to trade secrets, as that term is defined in ORS 646.461;

3 (B) Has access to competitively sensitive confidential business or professional information that  
 4 otherwise would not qualify as a trade secret, including product development plans, product launch  
 5 plans, marketing strategy or sales plans; or

6 (C) Is employed as an on-air talent by an employer in the business of broadcasting and the em-  
 7 ployer:

8 (i) In the year preceding the termination of the employee's employment, expended resources  
 9 equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or pub-  
 10 licly promote the employee, provided that the resources expended by the employer were expended  
 11 on media that the employer does not own or control; and

12 (ii) Provides the employee, for the time the employee is restricted from working, the greater of  
 13 compensation equal to at least 50 percent of the employee's annual gross base salary and commis-  
 14 sions at the time of the employee's termination or 50 percent of the median family income for a  
 15 four-person family, as determined by the United States Census Bureau for the most recent year  
 16 available at the time of the employee's termination; and

17 (d) The total amount of the employee's annual gross salary and commissions, calculated on an  
 18 annual basis, at the time of the employee's termination exceeds the median family income for a  
 19 four-person family, as determined by the United States Census Bureau for the most recent year  
 20 available at the time of the employee's termination. This paragraph does not apply to an employee  
 21 described in paragraph (c)(C) of this subsection.

22 (2) The term of a noncompetition agreement may not exceed two years from the date of the  
 23 employee's termination. The remainder of a term of a noncompetition agreement in excess of two  
 24 years is voidable and may not be enforced by a court of this state.

25 (3) Subsections (1) and (2) of this section apply only to noncompetition agreements made in the  
 26 context of an employment relationship or contract and not otherwise.

27 (4) Subsections (1) and (2) of this section do not apply to:

28 (a) Bonus restriction agreements, which are lawful agreements that may be enforced by the  
 29 courts in this state; or

30 (b) A covenant not to solicit employees of the employer or solicit or transact business with  
 31 customers of the employer.

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

34 (6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement is en-  
 35 forceable for the full term of the agreement, for up to two years, if the employer provides the em-  
 36 ployee, for the time the employee is restricted from working, the greater of:

37 (a) Compensation equal to at least 50 percent of the employee's annual gross base salary and  
 38 commissions at the time of the employee's termination; or

39 (b) Fifty percent of the median family income for a four-person family, as determined by the  
 40 United States Census Bureau for the most recent year available at the time of the employee's ter-  
 41 mination.

42 (7) As used in this section:

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

45 (A) Competition by the employee with the employer is limited or restrained after termination

1 of employment, but the restraint is limited to a period of time, a geographic area and specified ac-  
2 tivities, all of which are reasonable in relation to the services described in subparagraph (B) of this  
3 paragraph;

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

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

10 (b) "Broadcasting" means the activity of transmitting of any one-way electronic signal by radio  
11 waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

12 (c) "Employee" and "employer" have the meanings given those terms in ORS 652.310.

13 (d) "Noncompetition agreement" means an agreement, written or oral, express or implied, be-  
14 tween 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 3. The amendments to ORS 653.295 by section 2 of this 2009 Act apply to non-**  
19 **competition agreements entered into on or after the effective date of this 2009 Act.**

20 **SECTION 4. The amendments to ORS 36.620 by section 1 of this 2009 Act apply to arbi-**  
21 **tration agreements entered into on or after the effective date of this 2009 Act.**

22 **SECTION 5. Any noncompetition agreement entered into before the effective date of this**  
23 **2009 Act shall continued to be governed by ORS 653.295 as in effect immediately before the**  
24 **effective date of this 2009 Act.**

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