

# House Bill 2933

Sponsored by Representative HOLVEY (Pre-session filed.)

## 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**.

Declares agreements between employers and customer that prohibit utilizing services of former employee of employer by customer unless customer pays employer penalty or moneys void and unenforceable if prohibition exceeds two years. Establishes right to bring civil action for violation.

## A BILL FOR AN ACT

1  
2 Relating to prohibitions in employer agreements with customers.

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

4 **SECTION 1. The Legislative Assembly finds that:**

5 (1) **Oregon is experiencing an unprecedented high rate of unemployment of its residents**  
6 **throughout this state;**

7 (2) **Oregonians are finding it increasingly difficult to obtain and retain employment within**  
8 **this state;**

9 (3) **Agreements between an employer and a customer that prohibit the hiring of a former**  
10 **employee of the employer by the customer unless the customer pays the former employer a**  
11 **penalty or moneys operate to the detriment of Oregonians who are in many circumstances**  
12 **desperately seeking employment;**

13 (4) **Agreements that prohibit the hiring of a former employee of the employer by the**  
14 **customer are particularly detrimental to unemployed Oregonians when the former employer**  
15 **does not have or cannot offer an employment opportunity to the former employee whose**  
16 **services the customer now seeks to utilize through a different employer with whom the**  
17 **employee is currently employed; and**

18 (5) **Oregon businesses will not suffer a significant disadvantage by restricting the**  
19 **lawfulness of agreements between an employer and a customer that prohibit the hiring of a**  
20 **former employee of the employer by the customer unless the customer pays the former**  
21 **employer a penalty or moneys to a limited period of time.**

22 **SECTION 2. (1) As used in sections 1 to 3 of this 2011 Act:**

23 (a) **"Customer" means a person that utilizes and pays for the services of employees of**  
24 **an employer under a contract entered into between the employer and the customer for that**  
25 **purpose, whether or not the contractual relationship between the employer and the customer**  
26 **has terminated.**

27 (b) **"Employer" means any person who employs another person for the provision of ser-**  
28 **vices to a customer.**

29 (c) **"Person" has the meaning given that term in ORS 646.605.**

30 (d) **"Services" means labor, work, skills or expertise provided in connection with a trade,**  
31 **business, occupation, industry or other type of employment in which employees are gainfully**

**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 employed.

2 (2) It is unlawful for an employer to require an agreement, or a provision in an agree-  
3 ment, with a customer that would prohibit the hiring of a former employee of the employer  
4 by the customer unless the customer pays the former employer a penalty or moneys, how-  
5 ever designated, unless:

6 (a) The prohibition expires and becomes unenforceable after a period of time not ex-  
7 ceeding two years following the date the former employee's employment with the employer  
8 is terminated; or

9 (b) The employer can demonstrate that a significant loss or damage would occur to the  
10 employer or the employer's business if the services of a former employee of the employer  
11 are utilized by the customer unless a penalty or payment of moneys, however designated, is  
12 required, and the significant loss or damage that would be incurred by the employer is  
13 identified in writing in the agreement and initialed by the customer at the time the agree-  
14 ment is made.

15 (3) An agreement, or provision of an agreement, entered into between an employer and  
16 a customer in violation of this section is void and unenforceable.

17 **SECTION 3.** A person that is adversely affected by an employer's violation of section 2  
18 of this 2011 Act shall have a cause of action to recover actual damages and may also apply  
19 to a court for an injunction to prevent enforcement of an agreement, or provision of an  
20 agreement, that violates section 2 of this 2011 Act. If damages are awarded or an injunction  
21 granted, the person shall be entitled to reasonable attorney fees and costs at trial and on  
22 appeal.

23 **SECTION 4.** Sections 1 to 3 of this 2011 Act apply to agreements between employers and  
24 customers executed on or after the effective date of this 2011 Act.