

# House Bill 3236

Sponsored by Representative MCLANE, Senator FERRIOLI

## 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**.

Limits enforceability of noncompetition agreement to one year.

## A BILL FOR AN ACT

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

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

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

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

(a)(A) The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of the employee's employment that a noncompetition agreement is required as a condition of employment; or

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

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

(c) The employer has a protectable interest. As used in this paragraph, an employer has a protectable interest when the employee:

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

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

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

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

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

(d) The total amount of the employee's annual gross salary and commissions, calculated on an annual basis, at the time of the employee's termination exceeds the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year

**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 available at the time of the employee's termination. This paragraph does not apply to an employee  
2 described in paragraph (c)(C) of this subsection.

3 (2) The term of a noncompetition agreement may not exceed [*two years*] **one year** from the date  
4 of the employee's termination. The remainder of a term of a noncompetition agreement in excess  
5 of [*two years*] **one year** is voidable and may not be enforced by a court of this state.

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

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

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

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

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

15 (6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement is en-  
16 forceable for the full term of the agreement, for up to [*two years*] **one year**, if the employer provides  
17 the employee, for the time the employee is restricted from working, the greater of:

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

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

23 (7) As used in this section:

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

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

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

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

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

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

39 (d) "Noncompetition agreement" means an agreement, written or oral, express or implied, be-  
40 tween an employer and employee under which the employee agrees that the employee, either alone  
41 or as an employee of another person, will not compete with the employer in providing products,  
42 processes or services that are similar to the employer's products, processes or services for a period  
43 of time or within a specified geographic area after termination of employment.

44 **SECTION 2. The amendments to ORS 653.295 by section 1 of this 2015 Act apply to non-**  
45 **competition agreements entered into on or after January 1, 2016.**

