

D R A F T

SUMMARY

Voids noncompetition agreements except to extent that former employee may not contact former customer or client to provide similar product, process or service for six months after employee's date of separation. Allows enforcement of trade secret protection under existing law.

A BILL FOR AN ACT

1
2 Relating to unenforceability of noncompetition agreements; amending ORS
3 653.295.

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

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

6 653.295. (1) A noncompetition agreement entered into between an em-
7 ployer and employee is **void, except that an employee may not contact**
8 **former customers or clients to provide similar products, processes or**
9 **services for six months after the employee's date of separation from**
10 **the employer.** *[voidable and may not be enforced by a court of this state*
11 *unless:]*

12 *[(a)(A) The employer informs the employee in a written employment offer*
13 *received by the employee at least two weeks before the first day of the*
14 *employee's employment that a noncompetition agreement is required as a con-*
15 *dition of employment; or]*

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

18 *[(b) The employee is a person described in ORS 653.020 (3);]*

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

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

2 [(B) Has access to competitively sensitive confidential business or profes-
3 sional information that otherwise would not qualify as a trade secret, includ-
4 ing product development plans, product launch plans, marketing strategy or
5 sales plans; or]

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

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

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

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

25 [(2) The term of a noncompetition agreement may not exceed 18 months from
26 the date of the employee's termination. The remainder of a term of a noncom-
27 petition agreement in excess of 18 months is voidable and may not be enforced
28 by a court of this state.]

29 [(3) Subsections (1) and (2) of this section apply only to noncompetition
30 agreements made in the context of an employment relationship or contract and
31 not otherwise.]

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

2 [(a) Bonus restriction agreements, which are lawful agreements that may
3 be enforced by the courts in this state; or]

4 [(b) A covenant not to solicit employees of the employer or solicit or transact
5 business with customers of the employer.]

6 [(5)] (2) Nothing in this section restricts the right of any person to pro-
7 tect trade secrets or other proprietary information by injunction or any other
8 lawful means under other applicable laws.

9 [(6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompe-
10 tition agreement is enforceable for the full term of the agreement, for up to 18
11 months, if the employer provides the employee, for the time the employee is
12 restricted from working, the greater of:]

13 [(a) Compensation equal to at least 50 percent of the employee's annual
14 gross base salary and commissions at the time of the employee's termination;
15 or]

16 [(b) Fifty percent of the median family income for a four-person family, as
17 determined by the United States Census Bureau for the most recent year
18 available at the time of the employee's termination.]

19 [(7) As used in this section:]

20 [(a) "Bonus restriction agreement" means an agreement, written or oral,
21 express or implied, between an employer and employee under which:]

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

26 [(B) The services performed by the employee pursuant to the agreement in-
27 clude substantial involvement in management of the employer's business, per-
28 sonal contact with customers, knowledge of customer requirements related to
29 the employer's business or knowledge of trade secrets or other proprietary in-
30 formation of the employer; and]

31 [(C) The penalty imposed on the employee for competition against the em-

1 *ployer is limited to forfeiture of profit sharing or other bonus compensation*
2 *that has not yet been paid to the employee.]*

3 [(b) “Broadcasting” means the activity of transmitting of any one-way elec-
4 tronic signal by radio waves, microwaves, wires, coaxial cables, wave guides
5 or other conduits of communications.]

6 **(3) As used in this section:**

7 [(c)] (a) “Employee” and “employer” have the meanings given those terms
8 in ORS 652.310.

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

16 (c) “Trade secret” has the meaning given that term in ORS 646.461.

17
