

Requested by Senator BEYER

**PROPOSED AMENDMENTS TO
SENATE BILL 977**

1 On page 1 of the printed bill, delete lines 4 through 31 and delete pages
2 2 and 3 and insert:

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

4 “653.295. (1) A noncompetition agreement entered into between an em-
5 ployer and employee is voidable and may not be enforced by a court of this
6 state unless:

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

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

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

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

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

17 “(B) Has access to competitively sensitive confidential business or pro-
18 fessional information that otherwise would not qualify as a trade secret, in-
19 cluding product development plans, product launch plans, marketing strategy
20 or sales plans; or

21 “(C) Is employed as an on-air talent by an employer in the business of

1 broadcasting and the employer:

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

7 “(ii) Provides the employee, for the time the employee is restricted from
8 working, the greater of compensation equal to [*at least 50*] **100** percent of the
9 employee’s annual gross base salary and commissions at the time of the
10 employee’s termination or [50] **100** percent of the median family income for
11 a four-person family, as determined by the United States Census Bureau for
12 the most recent year available at the time of the employee’s termination;
13 [*and*]

14 “(d) The total amount of the employee’s annual gross salary and commis-
15 sions, calculated on an annual basis, at the time of the employee’s termi-
16 nation exceeds 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. This paragraph does not
19 apply to an employee described in paragraph (c)(C) of this subsection; **and**

20 “(e) **The employer provides the employee, for the time the employee**
21 **is restricted from working, compensation equal to 100 percent of the**
22 **employee’s annual gross base salary and commissions at the time of**
23 **the employee’s termination.**

24 “(2) The term of a noncompetition agreement may not exceed 18 months
25 from the date of the employee’s termination. The remainder of a term of a
26 noncompetition agreement in excess of 18 months is voidable and may not
27 be enforced by a court of this state.

28 “(3) Subsections (1) and (2) of this section apply only to noncompetition
29 agreements made in the context of an employment relationship or contract
30 and 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
5 transact business with customers of the employer.

6 “(5) Nothing in this section restricts the right of any person to protect
7 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 noncom-*
10 *petition agreement is enforceable for the full term of the agreement, for up to*
11 *18 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,*
17 *as determined by the United States Census Bureau for the most recent year*
18 *available at the time of the employee’s termination.]*

19 “[7] **(6)** 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 re-
23 strained after termination of employment, but the restraint is limited to a
24 period of time, a geographic area and specified activities, all of which are
25 reasonable in relation to the services described in subparagraph (B) of this
26 paragraph;

27 “(B) The services performed by the employee pursuant to the agreement
28 include substantial involvement in management of the employer’s business,
29 personal contact with customers, knowledge of customer requirements re-
30 lated to the employer’s business or knowledge of trade secrets or other pro-

1 proprietary information of the employer; and

2 “(C) The penalty imposed on the employee for competition against the
3 employer is limited to forfeiture of profit sharing or other bonus compen-
4 sation that has not yet been paid to the employee.

5 “(b) ‘Broadcasting’ means the activity of transmitting of any one-way
6 electronic signal by radio waves, microwaves, wires, coaxial cables, wave
7 guides or other conduits of communications.

8 “(c) ‘Employee’ and ‘employer’ have the meanings given those terms in
9 ORS 652.310.

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

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