

D R A F T

SUMMARY

Modifies requirements for enforceable noncompetition agreement. Makes noncompliant agreement void.

Limits term of noncompetition agreement to 12 months.

Modifies definition of “noncompetition agreement.”

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]* **void and unenforceable** 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 described in subsection (2) of this section**; *[. 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 profes-

sional 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;]

(d) Within 30 days after the date of the termination of the employee's employment, the employer provides a signed, written copy of the terms of the noncompetition agreement to the employee; and

[(d)] **(e) 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 available at the time of the employee's termination.] \$97,311, adjusted annually for inflation pursuant to the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor immediately preceding the calendar year of the employee's termination. This paragraph does not apply to an employee described in [paragraph (c)(C) of this subsection; and] subsection (2)(c) of this section.**

[(e) Within 30 days after the date of the termination of the employee's em-

ployment, the employer provides a signed, written copy of the terms of the noncompetition agreement to the employee.]

(2) For purposes of subsection (1)(c) of this section, an employer has a protectable interest when the employee:

(a) Has access to trade secrets, as 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:

(A) 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

(B) Provides the employee, for the time the employee is restricted from working, the greater of compensation equal to at least:

(i) Fifty percent of the employee's annual gross base salary and commissions at the time of the employee's termination; or

(ii) Fifty percent of \$97,311, adjusted annually for inflation pursuant to the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor immediately preceding the calendar year of the employee's termination.

[(2)] (3) The term of a noncompetition agreement may not exceed [18] 12 months from the date of the employee's termination. The remainder of a term of a noncompetition agreement in excess of [18] 12 months is [voidable] void and may not be enforced by a court of this state.

[(3)] (4) Subsections (1) and [(2)] (3) of this section apply only to non-

1 competition agreements made in the context of an employment relationship
2 or contract and not otherwise.

3 [(4)] (5) Subsections (1) and [(2)] (3) of this section do not apply to:

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

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

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

11 [(6)] (7) Notwithstanding subsection (1)(b) and [(d)] (e) of this section, a
12 noncompetition agreement is enforceable for the full term of the agreement,
13 for up to [18] 12 months, if the employer [provides] **agrees in writing to**
14 **provide** the employee, for the time the employee is restricted from working,
15 the greater of:

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

19 (b) Fifty percent of [*the median family income for a four-person family, as*
20 *determined by the United States Census Bureau for the most recent year*
21 *available at the time*] **\$97,311, adjusted annually for inflation pursuant**
22 **to the Consumer Price Index for All Urban Consumers, West Region**
23 **(All Items), as published by the Bureau of Labor Statistics of the**
24 **United States Department of Labor immediately preceding the calen-**
25 **dar year** of the employee's termination.

26 [(7)] (8) As used in this section:

27 (a) "Bonus restriction agreement" means an agreement, written or oral,
28 express or implied, between an employer and employee under which:

29 (A) Competition by the employee with the employer is limited or re-
30 strained after termination of employment, but the restraint is limited to a
31 period of time, a geographic area and specified activities, all of which are

reasonable in relation to the services described in subparagraph (B) of this paragraph;

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

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

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

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

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

SECTION 2. The amendments to ORS 653.295 by section 1 of this 2021 Act apply only to noncompetition agreements that are entered into on or after the effective date of this 2021 Act.