

Senate Bill 1527

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Labor and Business)

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**.

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

Limits term of noncompetition agreement to six months.

Modifies definition of "noncompetition agreement."

A BILL FOR AN ACT

1
2 Relating to noncompetition agreements; creating new provisions; and amending ORS 653.295.

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

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

5 653.295. (1) **An employer may not enter into a noncompetition agreement with an em-**
6 **ployee** [*A noncompetition agreement entered into between an employer and employee is voidable and*
7 *may not be enforced by a court of this state*] unless:

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

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

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

14 (c) The employer has a protectable interest **as described in subsection (3) of this section.**

15 [*As used in this paragraph, 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 professional information that*
18 *otherwise would not qualify as a trade secret, including product development plans, product launch*
19 *plans, marketing strategy or sales plans; or*]

20 [(C) *Is employed as an on-air talent by an employer in the business of broadcasting and the em-*
21 *ployer;*]

22 [(i) *In the year preceding the termination of the employee's employment, expended resources equal*
23 *to or exceeding 10 percent of the employee's annual salary to develop, improve, train or publicly pro-*
24 *mote the employee, provided that the resources expended by the employer were expended on media that*
25 *the employer does not own or control; and*]

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

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 of the employee's termination;]

2 **(2) A noncompetition agreement entered into between an employer and employee is void**
3 **and unenforceable unless:**

4 **(a) The agreement was entered into in accordance with subsection (1) of this section;**

5 [(d)] **(b) The total amount of the employee's annual gross salary and commissions, calculated on**
6 **an annual basis, at the time of the employee's termination exceeds [the median family income for a**
7 **four-person family, as determined by the United States Census Bureau for the most recent year avail-**
8 **able at the time of the employee's termination.] \$97,311, adjusted annually for inflation pursuant**
9 **to the Consumer Price Index for All Urban Consumers, West Region (All Items), as published**
10 **by the Bureau of Labor Statistics of the United States Department of Labor immediately**
11 **preceding the calendar year of the employee's termination.** This paragraph does not apply to

12 an employee described in [paragraph (c)(C) of this subsection] **subsection (3)(c) of this section;** and
13 [(e)] **(c) Within 30 days after the date of the termination of the employee's employment, the**
14 **employer provides a signed, written copy of the terms of the noncompetition agreement to the em-**
15 **ployee.**

16 **(3) For purposes of subsection (1)(c) of this section, an employer has a protectable in-**
17 **terest when the employee:**

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

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

22 **(c) Is employed as an on-air talent by an employer in the business of broadcasting and**
23 **the employer:**

24 **(A) In the year preceding the termination of the employee's employment, expended re-**
25 **sources equal to or exceeding 10 percent of the employee's annual salary to develop, improve,**
26 **train or publicly promote the employee, provided that the resources expended by the em-**
27 **ployer were expended on media that the employer does not own or control; and**

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

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

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

36 [(2)] **(4) The term of a noncompetition agreement may not exceed [18] six months from the date**
37 **of the employee's termination. The remainder of a term of a noncompetition agreement in excess of**
38 **[18] six months is [voidable] void and may not be enforced by a court of this state.**

39 [(3)] **(5) Subsections (1), [and] (2) and (4) of this section apply only to noncompetition agree-**
40 **ments made in the context of an employment relationship or contract and not otherwise.**

41 [(4)] **(6) Subsections (1), [and] (2) and (4) of this section do not apply to:**

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

44 **(b) A covenant not to solicit employees of the employer or solicit or transact business with**
45 **customers of the employer.**

1 [(5)] (7) Nothing in this section restricts the right of any person to protect trade secrets or other
 2 proprietary information by injunction or any other lawful means under other applicable laws.

3 [(6)] (8) Notwithstanding [subsection] subsections (1)(b) and (2)(b) [(d)] of this section, a non-
 4 competition agreement is enforceable for the full term of the agreement, for up to [18] six months,
 5 if the employer **agrees in writing to provide** [provides] the employee, for the time the employee is
 6 restricted from working, the greater of:

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

9 (b) Fifty percent of [the median family income for a four-person family, as determined by the
 10 United States Census Bureau for the most recent year available at the time] **\$97,311, adjusted annu-**
 11 **ally for inflation pursuant to the Consumer Price Index for All Urban Consumers, West Re-**
 12 **gion (All Items), as published by the Bureau of Labor Statistics of the United States**
 13 **Department of Labor immediately preceding the calendar year** of the employee’s termination.

14 [(7)] (9) As used in this section:

15 (a) “Bonus restriction agreement” means an agreement, written or oral, express or implied, be-
 16 tween an employer and employee under which:

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

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

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

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

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

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

35 **SECTION 2. The amendments to ORS 653.295 by section 1 of this 2020 Act apply only to**
 36 **noncompetition agreements that are entered into on or after the effective date of this 2020**
 37 **Act.**