

A-Engrossed Senate Bill 1998

Ordered by the Senate May 9
Including Senate Amendments dated May 9

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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. The statement includes a measure digest written in compliance with applicable readability standards.

Makes arbitration agreement between employer and employee void and unenforceable under certain conditions. Makes noncompetition agreement between employer and employee void and unenforceable under certain conditions. **Establishes conditions under which noncompetition agreement between employer and employee is valid and enforceable.**

A BILL FOR AN ACT

Relating to employment agreements; creating new provisions; and amending ORS 36.620 and 653.295.

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

SECTION 1. ORS 36.620 is amended to read:

36.620. (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) Subject to ORS 36.625 (8), the court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(5) A written arbitration agreement entered into between an employer and employee and otherwise valid under subsection (1) of this section is void and may not be enforced by the court unless:

(a) The employer informs the employee at the time the offer of employment is first communicated to the employee that an arbitration agreement is required as a condition of employment; or

(b) The arbitration agreement is entered into upon a subsequent bona fide advancement of the employee by the employer.

SECTION 2. ORS 653.295 is amended to read:

653.295. (1) A noncompetition agreement entered into between an employer and employee is void and may not be enforced by *[any court in]* **a court of** this state unless *[the agreement is entered into upon]* the:

[(a) Initial employment of the employee with the employer; or]

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 *[(b) Subsequent bona fide advancement of the employee with the employer.]*

2 **(a) Employer informs the employee prior to the acceptance of the employment offer by**
3 **the employee that a noncompetition agreement is required as a condition of employment; or**

4 **(b) Noncompetition agreement is entered into upon a subsequent bona fide advancement**
5 **of the employee by the employer.**

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

8 (3)(a) Subsection (1)(a) of this section applies only to noncompetition agreements entered into
9 after July 22, 1977.

10 (b) *[Subsection (1)(b), subsections (4) and (5) and subsection (6)(a)]* **Subsections (1)(b), (4), (5)**
11 **and (7) of this section apply to employment relationships and bonus restriction agreements in effect**
12 **or entered into after October 15, 1983.**

13 (4) Subsection (1) of this section does not apply to bonus restriction agreements, which are
14 lawful agreements that may be enforced by the courts in this state.

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

17 **(6) A noncompetition agreement entered into between an employer and employee under**
18 **subsection (1) of this section is void and may not be enforced by a court of this state if the**
19 **employee is laid off by the employer for any reason other than just cause. This subsection**
20 **does not apply to a covenant not to solicit or transact business with the customers of the**
21 **employer.**

22 **(7) If an employee subject to a noncompetition agreement is laid off due to an economic**
23 **downturn affecting the employer, and the employee is not rehired by the employer within 90**
24 **days of the date of being laid off in a position of the same level as the position from which**
25 **the employee was laid off, the noncompetition agreement is void.**

26 **(8) Notwithstanding subsections (1)(b), (4), (5), (6) and (7) of this section, a noncompeti-**
27 **tion agreement is enforceable for the full term of the agreement if the employer provides the**
28 **employee full compensation at the level at which the employee was being compensated as of**
29 **the date of being laid off for the full term of the agreement.**

30 **(9) Notwithstanding subsections (1), (6), (7) and (8) of this section, a noncompetition**
31 **agreement between an employer and the chief executive officer, chief financial officer or**
32 **members of the board of directors of the company is valid and may be enforced in a court**
33 **in this state.**

34 *[(6)]* **(10) As used in this section:**

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

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

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

45 (C) The penalty imposed on the employee for competition against the employer is limited to

1 forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

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

3 (c) **“Just cause” means a cause reasonably related to the ability of the employee to per-**
4 **form required work and includes, but is not limited to, any willful violation of reasonable**
5 **workplace rules, regulations or written policies.**

6 (d) **“Laid off” means to permanently terminate an employment relationship for reasons**
7 **that are beyond the employee’s control and that do not reflect discredit upon the employee.**
8 **Reasons for a layoff include, but are not limited to, the elimination of the employee’s posi-**
9 **tion, a lack of available funding or work, a reduction in the size of the workforce and changes**
10 **in the workplace that affect staffing needs.**

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

16 **SECTION 3. The amendments to ORS 653.295 by section 2 of this 2007 Act apply to non-**
17 **competition agreements entered into on or after the effective date of this 2007 Act.**

18 **SECTION 4. The amendments to ORS 36.620 by section 1 of this 2007 Act apply only to**
19 **arbitration agreements entered into on or after the effective date of this 2007 Act.**