

ASSEMBLY BILL NO. 419—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to noncompetition covenants in employment practices. (BDR 53-1095)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to labor; revising provisions governing noncompetition covenants in employment practices; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law governs noncompetition covenants in employment practices, providing that such covenants are void and unenforceable unless the covenant: (1) is supported by valuable consideration; (2) does not impose any restraint that is greater than is required for the protection of the employer; (3) does not impose any undue hardship on the employer; and (4) imposes restrictions that are appropriate in relation to the valuable consideration supporting the covenant. (NRS 613.195)

Section 1 of this bill provides that a noncompetition covenant is void and unenforceable if such a covenant: (1) restrains an employee from providing service to a former customer or client if the employee did not have a direct relationship or contact with a customer or client; (2) restrains the geographical area and scope of activity of future employment; (3) imposes restrictions on an employee who is not authorized direct access to certain information during the course of employment; and (4) prohibits an employee from competing with or becoming employed by a competitor of his or her employer for a period of more than 6 months after the termination of the employee’s employment with the employer, or 1 year after termination if the employer can demonstrate special circumstances.

Existing law further provides that a noncompetition covenant may not restrict a former employee of an employer from providing service to a former customer or client if: (1) the former employee did not solicit the former customer or client; (2) the customer or client voluntarily chose to leave and seek the services of the former employee; and (3) the former employee is otherwise complying with the noncompetition covenant. (NRS 613.195) **Section 1** removes such provisions.

Existing law also provides that if an employer brings an action to enforce a noncompetition covenant and the court finds the covenant contains limitations that are not reasonable and impose a greater restraint than is necessary, the court shall revise the covenant to the extent necessary and enforce the covenant as revised. (NRS 613.195) **Section 1** removes this provision. **Section 2** of this bill provides



* A B 4 1 9 *

28 that the amendatory provisions of this act apply to a noncompetition covenant
29 entered into before, on or after July 1, 2019.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 613.195 is hereby amended to read as follows:
2 613.195 1. A noncompetition covenant is void and
3 unenforceable unless the noncompetition covenant:

- 4 (a) Is supported by valuable consideration;
5 (b) Does not impose any restraint that is greater than is required
6 for the protection of the employer for whose benefit the restraint is
7 imposed;
8 (c) Does not impose any undue hardship on the employee; and
9 (d) Imposes restrictions that are appropriate in relation to the
10 valuable consideration supporting the noncompetition covenant.

11 2. ~~{A}~~ *For the purposes of subsection 1, a noncompetition*
12 *covenant* ~~{may not restrict a former employee of an employer}~~ *is*
13 *deemed to impose a restraint that is greater than is required for*
14 *the protection of the employer for whose benefit the restraint is*
15 *imposed and impose an undue hardship upon the employee if such*
16 *a covenant:*

17 (a) *Restrains the employee* from providing service to a former
18 customer or client if ~~{~~:

19 ~~—(a) The former}~~ *the* employee did not ~~{solicit}~~ *have a direct*
20 *relationship or contact with* the former customer or client;

21 (b) ~~{The customer or client voluntarily chose to leave and seek~~
22 ~~services from the former employee; and~~

23 ~~—(c) The former employee is otherwise complying with the~~
24 ~~limitations in the covenant as to time,}~~ *Restrains an employee from*
25 *pursuing a similar vocation in competition or being employed by a*
26 *competitor of his or her employer as to* geographical area and scope
27 of activity ~~{to be restrained, other than any limitation on providing~~
28 ~~services to a former customer or client who seeks the services of the~~
29 ~~former employee without any contact instigated by the former~~
30 ~~employee.~~

31 ~~→ Any provision in a noncompetition covenant which violates the~~
32 ~~provisions of this subsection is void and unenforceable.}~~ *which is*
33 *greater than is required for the protection of the employer;*

34 (c) *Imposes restrictions on an employee who is not authorized*
35 *to have direct access to trade secrets, business methods, lists of*
36 *customers, secret formulas or processes or confidential*
37 *information during the course of employment; and*

38 (d) *Imposes restrictions on an employee from pursuing a*
39 *similar vocation in competition with or becoming employed by a*



competitor of his or her employer for a period of more than 6 months after the termination of the employment of the employee, or 1 year after the termination of the employment of the employee if the employer can demonstrate special circumstances.

3. An employer in this State who negotiates, executes or attempts to enforce a noncompetition covenant that is void and unenforceable under this section does not violate the provisions of NRS 613.200.

4. If the termination of the employment of an employee is the result of a reduction of force, reorganization or similar restructuring of the employer, a noncompetition covenant is only enforceable during the period in which the employer is paying the employee's salary, benefits or equivalent compensation, including, without limitation, severance pay.

~~5. If an employer brings an action to enforce a noncompetition covenant and the court finds the covenant is supported by valuable consideration but contains limitations as to time, geographical area or scope of activity to be restrained that are not reasonable, impose a greater restraint than is necessary for the protection of the employer for whose benefit the restraint is imposed and impose undue hardship on the employee, the court shall revise the covenant to the extent necessary and enforce the covenant as revised. Such revisions must cause the limitations contained in the covenant as to time, geographical area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than is necessary for the protection of the employer for whose benefit the restraint is imposed.~~

~~6.]~~ As used in this section:

(a) "Employer" means every person having control or custody of any employment, place of employment or any employee.

(b) "Noncompetition covenant" means an agreement between an employer and employee which, upon termination of the employment of the employee, prohibits the employee from pursuing a similar vocation in competition with or becoming employed by a competitor of the employer.

Sec. 2. The amendatory provisions of this act apply to a noncompetition covenant entered into before, on or after July 1, 2019.

Sec. 3. This act becomes effective on July 1, 2019.

