

ASSEMBLY BILL NO. 291—ASSEMBLYWOMAN PETERS

MARCH 16, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing noncompetition covenants. (BDR 53-695)

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 noncompetition covenants; providing that a noncompetition covenant is void and unenforceable against independent contractors in certain circumstances; providing that a noncompetition covenant may not restrict an independent contractor from providing service to a former customer or client in certain circumstances; limiting the enforceability of a noncompetition covenant against an independent contractor in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law limits the enforceability of noncompetition agreements against employees under certain circumstances. Existing law provides that a noncompetition covenant is 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 for whose benefit the restraint is imposed; (3) does not impose any undue hardship on the employee; and (4) imposes restrictions that are appropriate in relation to the valuable consideration supporting the noncompetition covenant. (NRS 613.195) This bill applies the same restrictions on noncompetition covenants with independent contractors.

Existing law similarly provides that a noncompetition covenant may not restrict a former employee of an employer from providing service to a former customer or client under certain circumstances. (NRS 613.195) This bill applies the same provisions to independent contractors.

Existing law provides that 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



18 compensation. (NRS 613.195) This bill applies the same provisions to independent
19 contractors.

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 ~~H~~ *or*
9 *independent contractor*; and

10 (d) Imposes restrictions that are appropriate in relation to the
11 valuable consideration supporting the noncompetition covenant.

12 2. A noncompetition covenant may not restrict a former
13 employee *or independent contractor* of an employer from providing
14 service to a former customer or client if:

15 (a) The former employee *or independent contractor* did not
16 solicit the former customer or client;

17 (b) The customer or client voluntarily chose to leave and seek
18 services from the former employee ~~H~~ *or independent contractor*;
19 and

20 (c) The former employee *or independent contractor* is
21 otherwise complying with the limitations in the covenant as to time,
22 geographical area and scope of activity to be restrained, other than
23 any limitation on providing services to a former customer or client
24 who seeks the services of the former employee without any contact
25 instigated by the former employee ~~H~~ *or independent contractor*.

26 ➤ Any provision in a noncompetition covenant which violates the
27 provisions of this subsection is void and unenforceable.

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

32 4. If the termination of the employment of an employee *or the*
33 *services of an independent contractor* is the result of a reduction of
34 force, reorganization or similar restructuring of the employer, a
35 noncompetition covenant is only enforceable during the period in
36 which the employer is paying the ~~employee's~~ salary, benefits or
37 equivalent compensation ~~H~~ *of the employee or independent*
38 *contractor*, 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 ~~H~~ *or independent contractor*, 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 ~~H~~ *or receiving the services of an independent contractor*.

(b) “Noncompetition covenant” means an agreement between an employer and *an* employee *or independent contractor* which, upon termination of the employment of the employee ~~H~~ *or independent contractor*, prohibits the employee *or independent contractor* from pursuing a similar vocation in competition with , ~~for~~ becoming employed by *or providing services to* a competitor of the employer.

