

B-Engrossed
Senate Bill 248

Ordered by the House June 7
Including Senate Amendments dated May 9 and House Amendments dated
June 7

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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.

Makes arbitration agreement between employer and employee voidable and unenforceable except under certain conditions. Makes noncompetition agreement between employer and employee voidable and unenforceable except under certain conditions. **Provides that term of noncompetition agreement may not exceed two years. Establishes compensatory provisions under which employer may enforce noncompetition agreement for full term of agreement. Specifies that nonsolicitation agreements are not subject to restrictions imposed on noncompetition agreements.**

A BILL FOR AN ACT

1
2 Relating to employment agreements; creating new provisions; and amending ORS 36.620 and 653.295.

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

4 **SECTION 1.** ORS 36.620 is amended to read:

5 36.620. (1) An agreement contained in a record to submit to arbitration any existing or subse-
6 quent controversy arising between the parties to the agreement is valid, enforceable and irrevocable
7 except upon a ground that exists at law or in equity for the revocation of a contract.

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

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

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

14 **(5) A written arbitration agreement entered into between an employer and employee and**
15 **otherwise valid under subsection (1) of this section is voidable and may not be enforced by**
16 **a court unless:**

17 **(a) The employer informs the employee in a written employment offer received by the**
18 **employee at least two weeks before the first day of the employee's employment that an ar-**
19 **bitration agreement is required as a condition of employment; or**

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

22 **SECTION 2.** ORS 653.295 is amended to read:

23 653.295. (1) A noncompetition agreement entered into between an employer and employee is

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 [void] **voidable** and may not be enforced by [any court in] **a court of** this state unless [the agreement
2 is entered into upon the]:

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

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

5 **(a)(A) The employer informs the employee in a written employment offer received by the**
6 **employee at least two weeks before the first day of the employee's employment that a non-**
7 **competition agreement is required as a condition of employment; or**

8 **(B) The noncompetition agreement is entered into upon a subsequent bona fide advance-**
9 **ment of the employee by the employer;**

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

11 **(c) The employer has a protectable interest. As used in this paragraph, an employer has**
12 **a protectable interest when the employee:**

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

14 **(B) Has access to competitively sensitive confidential business or professional informa-**
15 **tion that otherwise would not qualify as a trade secret, including product development plans,**
16 **product launch plans, marketing strategy or sales plans; or**

17 **(C) Is employed as an on-air talent by an employer in the business of broadcasting and,**
18 **in the year preceding the termination of the employee's employment, the employer expended**
19 **resources equal to or exceeding 10 percent of the employee's annual salary to develop, im-**
20 **prove, train or publicly promote the employee. For the purposes of this subparagraph, the**
21 **resources expended by the employer to publicly promote the employee must have been ex-**
22 **pended on media that the employer does not own or control; and**

23 **(d) The total amount of the employee's annual gross salary and commissions, calculated**
24 **on an annual basis, at the time of the employee's termination exceeds the median family**
25 **income for a four-person family, as determined by the United States Census Bureau for the**
26 **most recent year available at the time of the employee's termination. This paragraph does**
27 **not apply to an employee described in paragraph (c)(C) of this subsection.**

28 **(2) The term of a noncompetition agreement may not exceed two years. The remainder**
29 **of a term of a noncompetition agreement in excess of two years is voidable and may not be**
30 **enforced by a court of this state.**

31 [(2)] **(3) [Subsection (1) of this section applies] Subsections (1) and (2) of this section apply** only
32 to noncompetition agreements made in the context of an employment relationship or contract and
33 not otherwise.

34 [(3)(a) *Subsection (1)(a) of this section applies only to noncompetition agreements entered into after*
35 *July 22, 1977.*]

36 [(b) *Subsection (1)(b), subsections (4) and (5) and subsection (6)(a) of this section apply to employ-*
37 *ment relationships and bonus restriction agreements in effect or entered into after October 15, 1983.*]

38 **(4) [Subsection (1) of this section does] Subsections (1) and (2) of this section do** not apply
39 to:

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

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

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

1 **(6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement**
2 **is enforceable for the full term of the agreement, for up to two years, if the employer pro-**
3 **vides the employee, for the time the employee is restricted from working, the greater of:**

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

6 **(b) Fifty percent of the median family income for a four-person family, as determined by**
7 **the United States Census Bureau for the most recent year available at the time of the em-**
8 **ployee’s termination.**

9 [(6)] (7) As used in this section:

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

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

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

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

22 **(b) “Broadcasting” means the activity of transmitting of any one-way electronic signal**
23 **by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of commu-**
24 **nications.**

25 [(b)] (c) “Employee” and “employer” have the meanings given those terms in ORS 652.310.

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

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

33 **SECTION 4. The amendments to ORS 36.620 by section 1 of this 2007 Act apply to arbi-**
34 **tration agreements entered into on or after the effective date of this 2007 Act.**

35 **SECTION 5. Any noncompetition agreement entered into before the effective date of this**
36 **2007 Act shall continue to be governed by ORS 653.295 as in effect immediately before the**
37 **effective date of this 2007 Act.**

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