

Senate Bill 1139

Sponsored by Senator TAYLOR

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

Digest: The Act makes changes to laws regarding noncompetes. (Flesch Readability Score: 61.2).
Makes requirements for noncompetition agreements applicable to agreements regarding solicitation of employer's employees or customers.
Provides an administrative remedy for employees alleging violation of requirements applicable to noncompetition agreements.

A BILL FOR AN ACT

1
2 Relating to noncompetition agreements; 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) A noncompetition agreement entered into between an employer and employee is void
6 and unenforceable unless:

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

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

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

13 (c) The employer has a protectable interest as described in subsection (2) of this section;

14 (d) Within 30 days after the date of the termination of the employee's employment, the employer
15 provides a signed, written copy of the terms of the noncompetition agreement to the employee; and

16 (e) The total amount of the employee's annual gross salary and commissions, calculated on an
17 annual basis, at the time of the employee's termination exceeds \$100,533, adjusted annually for in-
18 flation pursuant to the Consumer Price Index for All Urban Consumers, West Region (All Items),
19 as published by the Bureau of Labor Statistics of the United States Department of Labor imme-
20 diately preceding the calendar year of the employee's termination. This paragraph does not apply
21 to an employee described in subsection (2)(c) of this section.

22 (2) For purposes of subsection (1)(c) of this section, an employer has a protectable interest when
23 the employee:

24 (a) Has access to trade secrets, as defined in ORS 646.461;

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

28 (c) Is employed as an on-air talent by an employer in the business of broadcasting and the em-
29 ployer:

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 (A) In the year preceding the termination of the employee's employment, expended resources
 2 equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or pub-
 3 licly promote the employee, provided that the resources expended by the employer were expended
 4 on media that the employer does not own or control; and

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

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

9 (ii) Fifty percent of \$100,533, adjusted annually for inflation pursuant to the Consumer Price
 10 Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Sta-
 11 tistics of the United States Department of Labor immediately preceding the calendar year of the
 12 employee's termination.

13 (3) The term of a noncompetition agreement may not exceed 12 months from the date of the
 14 employee's termination. The remainder of a term of a noncompetition agreement in excess of 12
 15 months is void and may not be enforced by a court of this state.

16 (4) Subsections (1) and (3) of this section apply only to noncompetition agreements made in the
 17 context of an employment relationship or contract and not otherwise.

18 (5) Subsections (1) and (3) of this section do not apply to[:]

19 [(a)] Bonus restriction agreements, which are lawful agreements that may be enforced by the
 20 courts in this state[; or]

21 [(b) *A covenant not to solicit employees of the employer or solicit or transact business with cus-*
 22 *tomers of the employer*].

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

25 (7) Notwithstanding subsection (1)(b) and (e) of this section, a noncompetition agreement is en-
 26 forceable for the full term of the agreement, for up to 12 months, if the employer agrees in writing
 27 to provide the employee, for the time the employee is restricted from working, the greater of:

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

30 (b) Fifty percent of \$100,533, adjusted annually for inflation pursuant to the Consumer Price
 31 Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Sta-
 32 tistics of the United States Department of Labor immediately preceding the calendar year of the
 33 employee's termination.

34 **(8) In addition to any other remedy otherwise available to an employee under any pro-**
 35 **vision of law, an employee who alleges a violation of this section may file a complaint with**
 36 **the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS**
 37 **659A.820.**

38 [(8)] (9) As used in this section:

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

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

45 (B) The services performed by the employee pursuant to the agreement include substantial in-

1 involvement in management of the employer’s business, personal contact with customers, knowledge
2 of customer requirements related to the employer’s business or knowledge of trade secrets or other
3 proprietary information of the employer; and

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

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

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

9 (d) “Noncompetition agreement” means a written agreement between an employer and employee
10 under which the employee agrees that the employee, either alone or as an employee of another
11 person, will not:

12 (A) Compete with the employer in providing products, processes or services that are similar to
13 the employer’s products, processes or services for a period of time or within a specified geographic
14 area after termination of employment.

15 (B) **Solicit employees of the employer or solicit or transact business with customers of**
16 **the employer.**

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