

A1278-B Joyner Same as [S 3100-A](#) RYAN

Labor Law

TITLE...Prohibits non-compete agreements and certain restrictive covenants

01/13/23 referred to labor
 05/19/23 amend and recommit to labor
 05/19/23 print number 1278a
 05/22/23 reported referred to codes
 05/31/23 reported referred to rules
 05/31/23 amend and recommit to rules 1278b
 06/05/23 reported
 06/05/23 rules report cal.484
 06/05/23 ordered to third reading rules cal.484
 06/20/23 substituted by s3100a

S03100 RYAN AMEND=A

01/27/23 REFERRED TO LABOR
 05/23/23 1ST REPORT CAL.1335
 05/24/23 2ND REPORT CAL.
 05/30/23 ADVANCED TO THIRD READING
 05/31/23 AMENDED ON THIRD READING 3100A
 06/07/23 PASSED SENATE
 06/07/23 DELIVERED TO ASSEMBLY
 06/07/23 referred to codes
 06/20/23 substituted for a1278b
 06/20/23 ordered to third reading rules cal.484
 06/20/23 passed assembly
 06/20/23 returned to senate

JOYNER, BORES, BURDICK, SIMON, ARDILA, REYES, TAYLOR, GIBBS, LUNSFORD, WALKER, L. ROSENTHAL, WALLACE, FORREST; M-S: Seawright

Add §191-d, Lab L

Prohibits non-compete agreements and certain restrictive covenants; authorizes covered individuals to bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated such prohibition.

STATE OF NEW YORK

1278--B

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. JOYNER, BORES, BURDICK, SIMON, ARDILA, REYES, TAYLOR, GIBBS, LUNSFORD, WALKER, L. ROSENTHAL -- Multi-Sponsored by -- M. of A. SEAWRIGHT -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the labor law, in relation to prohibiting non-compete agreements and certain restrictive covenants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 191-d to
2 read as follows:

3 § 191-d. Non-compete agreements. 1. For the purposes of this section,
4 the term:

5 (a) "non-compete agreement" means any agreement, or clause contained
6 in any agreement, between an employer and a covered individual that
7 prohibits or restricts such covered individual from obtaining employ-
8 ment, after the conclusion of employment with the employer included as a
9 party to the agreement; and

10 (b) "covered individual" means any other person who, whether or not
11 employed under a contract of employment, performs work or services for
12 another person on such terms and conditions that they are, in relation
13 to that other person, in a position of economic dependence on, and under
14 an obligation to perform duties for, that other person.

15 2. No employer or its agent, or the officer or agent of any corpo-
16 ration, partnership, limited liability company, or other entity, shall
17 seek, require, demand or accept a non-compete agreement from any covered
18 individual.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 3. Every contract by which anyone is restrained from engaging in a
2 lawful profession, trade, or business of any kind is to that extent
3 void. For all covered individuals, no employer or its agent, or the
4 officer or agent of any corporation, partnership, limited liability
5 company, or other entity shall seek, require, demand or accept a non-
6 compete agreement from any covered individual.

7 4. (a) A covered individual, may bring a civil action in a court of
8 competent jurisdiction against any employer or persons alleged to have
9 violated this section. A covered individual shall bring such action
10 within two years of the later of: (i) when the prohibited non-compete
11 agreement was signed; (ii) when the covered individual learns of the
12 prohibited non-compete agreement; (iii) when the employment or contrac-
13 tual relationship is terminated; or (iv) when the employer takes any
14 step to enforce the non-compete agreement. The court shall have juris-
15 isdiction to void any such non-compete agreement and to order all appro-
16 priate relief, including enjoining the conduct of any person or employ-
17 er; ordering payment of liquidated damages; and awarding lost
18 compensation, damages, reasonable attorneys' fees and costs.

19 (b) For the purposes of this subdivision, liquidated damages shall be
20 calculated as an amount not more than ten thousand dollars. The court
21 shall award liquidated damages to every covered individual affected
22 under this section, in addition to any other remedies permitted by this
23 section.

24 5. Nothing in this section shall be construed or interpreted as
25 affecting any other provision of federal, state, or local law, rule, or
26 regulation relating to the ability of an employer to enter into an
27 agreement with a prospective or current covered individual that estab-
28 lishes a fixed term of service or prohibits disclosure of trade secrets,
29 disclosure of confidential and proprietary client information, or solici-
30 tation of clients of the employer that the covered individual learned
31 about during employment, provided that such agreement does not otherwise
32 restrict competition in violation of this section.

33 6. Notwithstanding section two hundred two-k of this chapter, the
34 provisions of this section shall apply to broadcast employees as defined
35 in section two hundred two-k of this chapter; provided, however, in the
36 event that any clause, section, sentence, paragraph, subdivision,
37 section, or part of this section shall be adjudged by any court of
38 competent jurisdiction to be invalid, then section two hundred two-k
39 shall remain in effect unless similarly adjudged to be invalid.

40 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
41 sion, section or part of this act shall be adjudged by any court of
42 competent jurisdiction to be invalid, such judgment shall not affect,
43 impair, or invalidate the remainder thereof, but shall be confined in
44 its operation to the clause, sentence, paragraph, subdivision, section
45 or part thereof directly involved in the controversy in which such judg-
46 ment shall have been rendered. It is hereby declared to be the intent of
47 the legislature that this act would have been enacted even if such
48 invalid provisions had not been included herein.

49 § 3. This act shall take effect on the thirtieth day after it shall
50 have become a law and shall be applicable to contracts entered into or
51 modified on or after such effective date.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A1278B

SPONSOR: Joyner

TITLE OF BILL:

An act to amend the labor law, in relation to prohibiting non-compete agreements and certain restrictive covenants

PURPOSE OR GENERAL IDEA OF BILL:

To amend the Labor Law regarding the permissible use of non-compete agreements in employment contracts.

SUMMARY OF PROVISIONS:

Section 1 would add a new Section 191-d to the Labor Law.

The bill would define relevant terms, including "non-compete agreement" and "covered-individual" and provide that no employer or its agent, or the officer or agent of any corporation, partnership, or limited liability company, shall seek, require, demand or accept a non-compete agreement from a covered individual.

The bill would void current non-compete agreements and prohibit employers from seeking such agreements, and provide that covered individuals may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated this section.

The bill would provide that such provisions would not affect any other provision of law relating to the ability of the employer to enter into an employment contract or other written agreement that protects specifically enumerated legitimate business interests with a prospective or current employee.

The bill would apply notwithstanding section 202-k of the labor law affecting broadcasting industry employees, and the provisions of that section would remain in effect in the event that any part of this bill be adjudged as invalid.

Section 2 would provide a severability clause. Section 3 would set the effective date.

DIFFERENCE BETWEEN ORIGINAL AND AMENDED VERSION (IF APPLICABLE):

Definitional changes to broaden scope of bill to apply to persons in position of economic dependence.

Clarifies that nothing in the section should be interpreted to constrain an employer from entering into agreements relating to the disclosure of

trade secrets, proprietary client information, or solicitation of clients.

Clarifies that the bill applies to section 202-k of the labor law affecting broadcast industry employees, and that section shall remain in effect should this bill or an part of it be found invalid.

JUSTIFICATION:

Non-compete agreements have a negative effect on the labor market and economy of New York State. They prevent workers from seeking employment at entities that may be a better fit, and they provide employers from providing more competitive benefits and wages, because their workforce cannot seek employment elsewhere.

In certain industries, they can have a detrimental impact on consumers as well. Non-compete agreements are prevalent in the medical field, where they disrupt continuity of care.

Recently, the federal government has announced an interest in banning such agreements nationwide via an FTC regulation. This bill would codify such a ban in state law.

LEGISLATIVE HISTORY:

2021-2022: A9591/S6425 - Referred to Labor

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

This bill would take effect on the thirtieth day after it shall have become law and would be applicable to contracts entered into or modified on or after such effective date.