

2021 Regular Session

SENATE BILL NO. 164

BY SENATOR HENRY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTRACTS. Provides relative to noncompete contracts or agreements. (8/1/21)

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AN ACT

To amend and reenact R.S. 23:921(A)(1), (C), (H), (J), and (K), relative to contracts; to provide relative to a noncompete contract or agreement; to provide terms, conditions, and procedures; to provide for technical changes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:921(A)(1), (C), (H), (J), and (K) are hereby amended and reenacted to read as follows:

§921. Restraint of business prohibited; restraint on forum prohibited; competing business; contracts against engaging in; provisions for

A.(1) Every contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, shall be null and void. ~~However, every~~ **Every** contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable.

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C. Any person, including a corporation and the individual shareholders of such corporation, who is employed as an agent, servant, or employee may agree with

1 his employer to refrain from carrying on or engaging in a business similar to that of
 2 the employer ~~and~~/or from soliciting customers of the employer within a specified
 3 parish or parishes, municipality or municipalities, or parts thereof, so long as the
 4 employer carries on a like business therein, not to exceed a period of two years from
 5 termination of employment. An independent contractor, whose work is performed
 6 pursuant to a written contract, may enter into an agreement to refrain from carrying
 7 on or engaging in a business similar to the business of the person with whom the
 8 independent contractor has contracted, on the same basis as if the independent
 9 contractor were an employee, for a period not to exceed two years from the date of
 10 the last work performed under the written contract.

11 * * *

12 H. Any agreement covered by Subsection B, C, E, F, G, J, K, or L of this
 13 Section shall be considered an obligation not to do, and failure to perform may
 14 entitle the obligee to recover damages for the loss sustained and the profit of which
 15 he has been deprived. ~~In addition, upon~~**Upon** proof of the obligor's failure to
 16 perform, and without the necessity of proving irreparable injury, a court of
 17 competent jurisdiction shall order injunctive relief enforcing the terms of the
 18 agreement. Any agreement covered by Subsection J, K, or L of this Section shall be
 19 null and void if it is determined that members of the agreement were engaged in ultra
 20 vires acts. Nothing in Subsection J, K, or L of this Section shall prohibit the transfer,
 21 sale, or purchase of stock or interest in publicly traded entities.

22 * * *

23 J. A corporation and the individual shareholders of such corporation may
 24 agree that such shareholders ~~will~~**shall** refrain from carrying on or engaging in a
 25 business similar to that of the corporation and from soliciting customers of the
 26 corporation within a specified parish or parishes, municipality or municipalities, or
 27 parts thereof, for as long as the corporation carries on a similar business therein, not
 28 to exceed a period of two years from the date such shareholder ceases to be a
 29 shareholder of the corporation. A violation of this Subsection shall be enforceable

1 in accordance with Subsection H of this Section.

2 K. A partnership and the individual partners of such partnership may agree
3 that such partners ~~will~~**shall** refrain from carrying on or engaging in a business similar
4 to that of the partnership and from soliciting customers of the partnership within a
5 specified parish or parishes, municipality or municipalities, or parts thereof, for as
6 long as the partnership carries on a similar business therein, not to exceed a period
7 of two years from the date such partner ceases to be a partner. A violation of this
8 Subsection shall be enforceable in accordance with Subsection H of this Section.

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The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yoursheka George.

DIGEST

SB 164 Original

2021 Regular Session

Henry

Present law provides that except as provided by law, every contract or agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind shall be null and void. Provides that every contract or agreement that meets the exceptions provided by law shall be enforceable.

Present law provides that the provisions of an employment contract or agreement that includes a choice of forum clause or choice of law clause, or attempts to enforce such a clause in any civil or administrative action involving an employee is null and void unless the clause is expressly, knowingly, and voluntarily agreed to and ratified by the employee after the occurrence of the incident, which is the subject of the civil or administrative action.

Present law provides that upon or in anticipation of the dissolution of a partnership, the partnership and the partners may agree that none of the partners will carry on a similar business within a specific area and for a specified period of time.

Present law provides that a franchise may enter into a contract that requires the franchisee to refrain from competing with certain persons or engaging in any other business similar to the franchise for a specified period of time.

Present law allows a corporation, partnership, and a limited liability company to agree that its shareholders, partners, or members will refrain from carrying on or engaging in a business similar to that of their business within a specific area and for a specified period of time after the date the shareholder, partner, or member's relationship with the business entity ends.

Proposed law retains present law but makes technical changes.

Effective August 1, 2021.

(Amends R.S. 23:921(A)(1), (C), (H), (J) and (K))