

2022 Regular Session

SENATE BILL NO. 238

BY SENATOR FIELDS

CONTRACTS. Prohibits contracts that impede an individuals right to work. (8/1/22)

1 AN ACT

2 To enact Part II-A of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 23:920, and to repeal R.S. 23:921, relative to employment
4 contracts or agreements; to prohibit forum, business, or employment restraints; to
5 provide definitions; to provide relative to employee compensation; to provide
6 exceptions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Part II-A of Chapter 9 of Title 23 of the Louisiana Revised Statutes of
9 1950, comprised of R.S. 23:920, is hereby enacted to read as follows:

10 **PART II-A. EMPLOYMENT CONTRACTS OR AGREEMENTS**

11 **§920. Restraint of forum prohibited; restraint on business prohibited; restraint**
12 **on employment prohibited; provisions for**

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

1 (2) The provisions of every employment contract or agreement, or
2 provisions thereof, by which any foreign or domestic employer or any other
3 person or entity includes a choice of forum clause or choice of law clause in an
4 employee's contract of employment or collective bargaining agreement, or
5 attempts to enforce either a choice of forum clause or choice of law clause in any
6 civil or administrative action involving an employee, shall be null and void
7 except where the choice of forum clause or choice of law clause is expressly,
8 knowingly, and voluntarily agreed to and ratified by the employee after the
9 occurrence of the incident which is the subject of the civil or administrative
10 action.

11 B. As used in this Section:

12 (1) "Employer" means a person who directly or indirectly engages
13 personal services of one or more employees , and includes the state of Louisiana,
14 or any political subdivision thereof, in administrative, executive, or professional
15 work or who performs predominantly intellectual, managerial, or creative
16 tasks, exercises discretion and independent judgment, and may earn a salary or
17 is paid on a salary basis.

18 (2) "Employee" means any individual who renders personal services
19 wholly or partly to an employer who pays or agrees to pay such individual at a
20 fixed rate, based on the time spent in the performance of such services or on the
21 number of operations accomplished, or quantity produced or handled.

22 (3) "Protectable interests" means trade secrets as that term is defined in
23 R.S. 51:1431, confidential information, including pricing information and
24 methodology, compensation, customer lists, customer data and information,
25 mailing lists, prospective customer information, financial investment
26 information, or forms used in the business that may not qualify as a trade secret
27 but which are treated as confidential to the business in whatever medium
28 provided or preserved.

29 C. A noncompetition agreement entered into between an employer and

1 employee is void and unenforceable unless:

2 (1) The employer informs the employee in a written employment offer
3 received by the employee at least two weeks before the first day of the
4 employee's employment that a noncompetition agreement is required as a
5 condition of employment; or

6 (2) The noncompetition agreement is entered into upon a subsequent
7 bona fide advancement of the employee by the employer; and

8 (a) The employee is a person described in Paragraph (B)(2) of this
9 Section.

10 (b)The employer has a protectable interest as defined in Paragraph
11 (A)(3) of this Section. An employer has a protectable interest when the
12 employee:

13 (i) Has access to trade secrets as that term is defined in R.S. 51:1431.

14 (ii) Has access to competitively sensitive confidential business or
15 professional information that otherwise would not qualify as a trade secret,
16 product development and launch plans, marketing strategies, or sales plans.

17 (iii)Has benefitted from expended resources equal to or exceeding 10
18 percent of the employee's annual salary to develop, improve, train or publicly
19 promote the employee in the year preceding the termination of the employee's
20 employment.

21 (iv) Has an annual gross base salary that exceeds one hundred fifty
22 thousand dollars, including commissions, immediately preceding the calendar
23 year of the employee's termination, or

24 (v) Is the employer's chief executive officer, president, executive director,
25 or the equivalent thereof, at the time of the employee's termination.

26 D. The term of a noncompetition agreement may not exceed twelve
27 months from the date of the employee's termination. The remainder of a term
28 of a noncompetition agreement in excess of twelve months is void and may not
29 be enforced by a court of this state.

1 Section 2. R.S. 23:921 is hereby repealed.

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

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Present law prohibits restraint of business and restraint on forum, and provides definitions and exemptions relative to present law.

Proposed law deletes present law in favor of proposed law makes employment contracts or agreements that restrain anyone from exercising a lawful profession, trade, or business of any kind unenforceable.

Proposed law makes employment contracts or agreements that include a choice of form or choice of law clause in any civil or administrative action unenforceable unless the employee expressly, knowingly, and voluntarily agrees to and ratifies the clause after the occurrence of the incident that is the subject of the civil or administrative action.

Proposed law defines "employer", "employee", and "protectable interest".

Proposed law provides that noncompetition agreements between employers and employees are unenforceable unless the employer notifies the employee of the noncompetition agreement at least 2 weeks before the employee begins his employment.

Proposed law defines "protectable interest" and provides examples.

Proposed law provides that a noncompetition agreement that exceeds 12 months from the date of the employee's termination is unenforceable.

Effective August 1, 2022.

(Adds R.S. 23:920; repeals R.S. 23:921)