

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0956.01 Yelana Love x2295

HOUSE BILL 22-1317

HOUSE SPONSORSHIP

Tipper,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING RESTRICTIVE EMPLOYMENT AGREEMENTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill declares that a restrictive employment agreement or covenant not to compete that restricts the right of any person to receive compensation for performance of labor for any employer is void, with certain exceptions.

Additionally, if the employer provides proper notice of the restrictive employment agreement or covenant not to compete to the employee or prospective employee, the following agreements or covenants are not prohibited:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- A provision providing for recovery of the expense of educating and training an employee who has served an employer for a period of less than 2 years, unless the education and training was primarily for the benefit or convenience of the employer;
- A reasonable confidentiality provision relevant to the employer's business that does not prohibit disclosure of information that arises from the employee's general training, knowledge, skill, or experience, whether gained on the job or otherwise, or information that is readily ascertainable to the public; and
- Agreements or covenants with a person earning annual cash compensation greater than the threshold amount for highly compensated employees.

The bill limits choice of law and choice of venue provisions in restrictive employment agreements and covenants not to compete.

The bill prohibits an employer from entering into, presenting to an employee or prospective employee as a term of employment, or attempting to enforce any restrictive employment agreement or covenant not to compete that is void under the bill. An employer who violates this provision is subject to a penalty of \$5,000 for each employee or prospective employee, injunctive relief, and actual damages.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 8-2-113 as
3 follows:

4 **8-2-113. Unlawful to intimidate employee - agreement not to**
5 **compete - prohibition - exceptions - notice - definition.** (1) (a) It ~~shall~~
6 ~~be~~ IS unlawful to use force, threats, or other means of intimidation to
7 prevent any person from engaging in any lawful occupation at any place
8 ~~he~~ THE PERSON sees fit.

9 (b) A PERSON WHO VIOLATES THIS SUBSECTION (1) COMMITS A
10 CLASS 2 MISDEMEANOR, AS DEFINED IN SECTION 18-1.3-501.

11 (2) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(b) AND (3) OF
12 THIS SECTION, any RESTRICTIVE EMPLOYMENT AGREEMENT OR covenant
13 not to compete ~~which~~ THAT restricts the right of any person to receive

1 compensation for performance of ~~skilled or unskilled~~ labor for any
2 employer ~~shall be~~ IS void. ~~but this subsection (2) shall not apply to:~~

3 (b) (I) THIS SUBSECTION (2) DOES NOT APPLY TO A RESTRICTIVE
4 EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE GOVERNING
5 A PERSON EARNING ANNUAL CASH COMPENSATION GREATER THAN THE
6 THRESHOLD AMOUNT FOR HIGHLY COMPENSATED EMPLOYEES IF THE
7 RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE:

8 (a) (A) ~~Any contract for~~ IS PART OF AN AGREEMENT OR COVENANT
9 FOR the purchase and sale of a business or the assets of a business; OR

10 (b) (B) ~~Any contract~~ IS for the protection of trade secrets AND IS
11 NARROWLY TAILORED TO PROTECT THE EMPLOYER'S LEGITIMATE INTEREST
12 IN PROTECTING TRADE SECRETS.

13 (II) AS USED IN THIS SUBSECTION (2)(b), "THRESHOLD AMOUNT
14 FOR HIGHLY COMPENSATED EMPLOYEES" MEANS THE GREATER OF THE
15 THRESHOLD AMOUNT FOR HIGHLY COMPENSATED EMPLOYEES AS
16 DETERMINED BY THE DIVISION OF LABOR STANDARDS AND STATISTICS IN
17 THE DEPARTMENT OF LABOR AND EMPLOYMENT:

18 (A) AS OF THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED; OR

19 (B) AT THE TIME THE RESTRICTIVE EMPLOYMENT AGREEMENT OR
20 COVENANT NOT TO COMPETE IS EXECUTED BY THE PARTIES.

21 ~~(c) Any contractual provision providing for recovery of the~~
22 ~~expense of educating and training an employee who has served an~~
23 ~~employer for a period of less than two years;~~

24 ~~(d) Executive and management personnel and officers and~~
25 ~~employees who constitute professional staff to executive and management~~
26 ~~personnel.~~

27 (3) THE FOLLOWING AGREEMENTS OR COVENANTS ARE NOT

1 PROHIBITED BY SUBSECTION (2) OF THIS SECTION:

2 (a) A PROVISION PROVIDING FOR AN EMPLOYER'S RECOVERY OF
3 THE EXPENSE OF EDUCATING AND TRAINING AN EMPLOYEE WHO HAS
4 SERVED AN EMPLOYER FOR A PERIOD OF LESS THAN TWO YEARS, UNLESS
5 THE EDUCATION AND TRAINING WAS PRIMARILY FOR THE BENEFIT OR
6 CONVENIENCE OF THE EMPLOYER; AND

7 (b) A REASONABLE CONFIDENTIALITY PROVISION RELEVANT TO
8 THE EMPLOYER'S BUSINESS THAT DOES NOT PROHIBIT DISCLOSURE OF
9 INFORMATION THAT ARISES FROM THE EMPLOYEE'S GENERAL TRAINING,
10 KNOWLEDGE, SKILL, OR EXPERIENCE, WHETHER GAINED ON THE JOB OR
11 OTHERWISE, OR INFORMATION THAT IS READILY ASCERTAINABLE TO THE
12 PUBLIC.

13 (4)(a) ANY RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT
14 NOT TO COMPETE THAT IS OTHERWISE PERMISSIBLE UNDER SUBSECTION (2)
15 OR (3) OF THIS SECTION IS VOID UNLESS NOTICE OF THE RESTRICTIVE
16 EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE AND THE
17 TERMS OF THE RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT NOT
18 TO COMPETE ARE PROVIDED TO:

19 (I) A PROSPECTIVE EMPLOYEE BEFORE THE EMPLOYEE ACCEPTS
20 THE EMPLOYER'S OFFER OF EMPLOYMENT; OR

21 (II) A CURRENT EMPLOYEE AT LEAST FOURTEEN DAYS BEFORE THE
22 EARLIER OF:

23 (A) THE EFFECTIVE DATE OF THE AGREEMENT OR COVENANT; OR

24 (B) THE EFFECTIVE DATE OF ANY ADDITIONAL COMPENSATION OR
25 CHANGE IN THE TERMS OR CONDITIONS OF EMPLOYMENT THAT PROVIDES
26 CONSIDERATION FOR THE AGREEMENT OR COVENANT.

27 (b) AN EMPLOYER SHALL PROVIDE THE NOTICE REQUIRED IN

1 SUBSECTION (4)(a) OF THIS SECTION IN A SEPARATE DOCUMENT FROM ANY
2 OTHER AGREEMENTS OR COVENANTS BETWEEN THE EMPLOYEE AND
3 EMPLOYER AND IN CLEAR AND CONSPICUOUS TERMS IN THE LANGUAGE IN
4 WHICH THE EMPLOYEE AND EMPLOYER COMMUNICATE ABOUT THE
5 EMPLOYEE'S PERFORMANCE. THE NOTICE MUST BE SIGNED BY THE
6 EMPLOYEE.

7 (c) (I) AN EMPLOYEE MAY REQUEST AN ADDITIONAL COPY OF THE
8 RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE
9 REQUIRED BY THIS SUBSECTION (4) ONCE EACH CALENDAR YEAR.

10 (II) AN EMPLOYER IS NOT REQUIRED UNDER THIS SUBSECTION (4)
11 TO PROVIDE THE EMPLOYEE WITH AN ADDITIONAL COPY OF THE
12 RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE
13 MORE THAN ONCE DURING A CALENDAR YEAR.

14 ~~(3)(a)~~ (5) Any covenant not to compete provision of an
15 employment, partnership, or corporate agreement between physicians that
16 restricts the right of a physician to practice medicine, as defined in section
17 12-240-107, upon termination of the agreement, is void; except that all
18 other provisions of the agreement enforceable at law, including
19 provisions that require the payment of damages in an amount that is
20 reasonably related to the injury suffered by reason of termination of the
21 agreement, are enforceable. Provisions of a covenant not to compete that
22 require the payment of damages upon termination of the agreement may
23 include damages related to competition.

24 ~~(b) Notwithstanding subsection (3)(a) of this section, after~~
25 ~~termination of an agreement described in subsection (3)(a) of this section,~~
26 ~~a physician may disclose his or her continuing practice of medicine and~~
27 ~~new professional contact information to any patient with a rare disorder,~~

1 ~~as defined in accordance with criteria developed by the National~~
2 ~~Organization for Rare Disorders, Inc., or a successor organization, to~~
3 ~~whom the physician was providing consultation or treatment before~~
4 ~~termination of the agreement. Neither the physician nor the physician's~~
5 ~~employer, if any, is liable to any party to the prior agreement for damages~~
6 ~~alleged to have resulted from the disclosure or from the physician's~~
7 ~~treatment of the patient after termination of the prior agreement.~~

8 ~~(4) A person who violates this section commits a class 2~~
9 ~~misdemeanor.~~

10 (6) (a) A CHOICE OF LAW PROVISION THAT APPLIES TO A
11 RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE
12 IS PROHIBITED AND UNENFORCEABLE UNLESS IT REQUIRES THAT A DISPUTE
13 ARISING UNDER THE RESTRICTIVE EMPLOYMENT AGREEMENT OR
14 COVENANT NOT TO COMPETE BE GOVERNED BY THE LAW OF THE
15 JURISDICTION WHERE THE EMPLOYEE PRIMARILY WORKS FOR THE
16 EMPLOYER OR, IF THE WORK RELATIONSHIP HAS ENDED, THE JURISDICTION
17 WHERE THE EMPLOYEE PRIMARILY WORKED AT THE TIME THE
18 RELATIONSHIP ENDED.

19 (b) A CHOICE OF VENUE PROVISION THAT APPLIES TO A
20 RESTRICTIVE EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE
21 IS PROHIBITED AND UNENFORCEABLE UNLESS IT REQUIRES THAT A DISPUTE
22 ARISING UNDER THE RESTRICTIVE EMPLOYMENT AGREEMENT OR
23 COVENANT NOT TO COMPETE BE DECIDED IN A JURISDICTION WHERE:

24 (I) THE EMPLOYEE PRIMARILY WORKS OR, IF THE WORK
25 RELATIONSHIP HAS ENDED, A JURISDICTION WHERE THE EMPLOYEE
26 PRIMARILY WORKED AT THE TIME THE RELATIONSHIP ENDED; OR

27 (II) THE EMPLOYEE RESIDES AT THE TIME OF THE DISPUTE.

1 (7) AN EMPLOYEE WHO IS A PARTY TO A RESTRICTIVE
2 EMPLOYMENT AGREEMENT OR A COVENANT NOT TO COMPETE, OR A
3 SUBSEQUENT EMPLOYER THAT HAS HIRED OR IS CONSIDERING HIRING THE
4 EMPLOYEE, MAY SEEK A DECLARATORY JUDGMENT FROM A COURT OF
5 COMPETENT JURISDICTION OR AN ARBITRATOR THAT THE RESTRICTIVE
6 EMPLOYMENT AGREEMENT OR COVENANT NOT TO COMPETE IS
7 UNENFORCEABLE.

8 (8) (a) AN EMPLOYER SHALL NOT ENTER INTO, PRESENT TO AN
9 EMPLOYEE OR PROSPECTIVE EMPLOYEE AS A TERM OF EMPLOYMENT, OR
10 ATTEMPT TO ENFORCE ANY RESTRICTIVE EMPLOYMENT AGREEMENT OR
11 COVENANT NOT TO COMPETE THAT IS VOID UNDER THIS SECTION.

12 (b) AN EMPLOYER THAT VIOLATES SUBSECTION (8)(a) OF THIS
13 SECTION IS LIABLE FOR ACTUAL DAMAGES AND A PENALTY OF FIVE
14 THOUSAND DOLLARS PER EMPLOYEE OR PROSPECTIVE EMPLOYEE HARMED
15 BY THE CONDUCT. THE ATTORNEY GENERAL, THE DIRECTOR OF THE
16 DIVISION OF LABOR STANDARDS AND STATISTICS, AND ANY EMPLOYEE OR
17 PROSPECTIVE EMPLOYEE HARMED BY AN EMPLOYER'S CONDUCT MAY
18 BRING AN ACTION FOR INJUNCTIVE RELIEF AND TO RECOVER PENALTIES. IN
19 ADDITION TO INJUNCTIVE RELIEF AND THE PENALTY ALLOWED IN THIS
20 SUBSECTION (8)(b), AN EMPLOYEE OR PROSPECTIVE EMPLOYEE MAY
21 RECOVER ACTUAL DAMAGES IN ANY PRIVATE ACTION BROUGHT UNDER
22 THIS SECTION.

23 **SECTION 3. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2022 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.

6 (2) This act applies to restrictive employment agreements or
7 covenants not to compete entered into or renewed on or after the
8 applicable effective date of this act.