

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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 worker - 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 covenant not to compete ~~which~~ THAT restricts the
13 right of any person to receive compensation for performance of ~~skilled or~~

1 unskilled labor for any employer shall be IS void. but this subsection (2)
2 shall not apply to:

3 (b) THIS SUBSECTION (2) DOES NOT APPLY TO A COVENANT
4 NOT TO COMPETE GOVERNING A PERSON WHO, AT BOTH THE TIME THE
5 COVENANT NOT TO COMPETE IS ENTERED INTO AND AT THE TIME THE
6 COVENANT IS ENFORCED, EARNS ANNUAL CASH COMPENSATION GREATER
7 THAN THE THRESHOLD AMOUNT FOR HIGHLY COMPENSATED WORKERS IF
8 THE COVENANT NOT TO COMPETE IS FOR THE PROTECTION OF TRADE
9 SECRETS AND IS NO BROADER THAN IS REASONABLY NECESSARY TO
10 PROTECT THE EMPLOYER'S LEGITIMATE INTEREST IN PROTECTING TRADE
11 SECRETS.

12 ~~(a) Any contract for the purchase and sale of a business or the~~
13 ~~assets of a business;~~

14 ~~(b) Any contract for the protection of trade secrets;~~

15 (c) AS USED IN SUBSECTION (2)(b) OF THIS SECTION:

16 (I) "CASH COMPENSATION" MEANS THE COMPENSATION,
17 INCLUDING EARNED SALARY, EARNED BONUSES, EARNED COMMISSIONS, OR
18 ANY OTHER FORM OF TAXABLE COMPENSATION, REFLECTED AS WAGES,
19 TIPS, AND OTHER COMPENSATION ON THE WORKER'S IRS FORM W-2 OR
20 1099 PLUS ANY ELECTIVE DEFERRALS NOT REFLECTED AS WAGES, TIPS,
21 AND OTHER COMPENSATION ON THE WORKER'S FEDERAL FORM W-2,
22 INCLUDING EMPLOYEE CONTRIBUTIONS TO A 401(k) PLAN, 403(b) PLAN,
23 FLEXIBLE SPENDING ACCOUNT, OR HEALTH SAVINGS ACCOUNT, OR
24 COMMUTER BENEFIT-RELATED DEDUCTIONS OR THE AMOUNT OF
25 COMPENSATION A WORKER WOULD HAVE EARNED, BUT FOR A LEAVE OF
26 ABSENCE TAKEN VOLUNTARILY BY THE WORKER.

27 (II) "THRESHOLD AMOUNT" FOR HIGHLY COMPENSATED WORKERS"

1 MEANS THE GREATER OF THE THRESHOLD AMOUNT FOR HIGHLY
2 COMPENSATED WORKERS AS DETERMINED BY THE DIVISION OF LABOR
3 STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND
4 EMPLOYMENT:

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

6 (B) AT THE TIME THE COVENANT NOT TO COMPETE IS EXECUTED
7 BY THE PARTIES.

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

11 ~~(d) Executive and management personnel and officers and~~
12 ~~employees who constitute professional staff to executive and management~~
13 ~~personnel.~~

14 (3) THE FOLLOWING COVENANTS ARE NOT PROHIBITED BY
15 SUBSECTION (2) OF THIS SECTION:

16 (a) A PROVISION PROVIDING FOR AN EMPLOYER'S RECOVERY OF
17 THE EXPENSE OF EDUCATING AND TRAINING A WORKER WHO HAS SERVED
18 AN EMPLOYER FOR A PERIOD OF LESS THAN TWO YEARS, WHERE THE
19 TRAINING IS DISTINCT FROM NORMAL, ON-THE-JOB TRAINING, THE
20 EMPLOYER'S RECOVERY IS LIMITED TO THE REASONABLE COSTS OF SUCH
21 TRAINING AND IS PRORATED OVER THE COURSE OF THE TWO YEARS
22 SUBSEQUENT TO THE TRAINING, AND THE EMPLOYER RECOVERING FOR THE
23 COSTS OF THE TRAINING WOULD NOT VIOLATE THE "FAIR LABOR
24 STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201 ET SEQ., OR ARTICLE 4 OF
25 TITLE 8;

26 (b) A REASONABLE CONFIDENTIALITY PROVISION RELEVANT TO
27 THE EMPLOYER'S BUSINESS THAT DOES NOT PROHIBIT DISCLOSURE OF

1 INFORMATION THAT ARISES FROM THE WORKER'S GENERAL TRAINING,
2 KNOWLEDGE, SKILL, OR EXPERIENCE, WHETHER GAINED ON THE JOB OR
3 OTHERWISE, INFORMATION THAT IS READILY ASCERTAINABLE TO THE
4 PUBLIC, OR INFORMATION THAT A WORKER OTHERWISE HAS A RIGHT TO
5 DISCLOSE AS LEGALLY PROTECTED CONDUCT;

6 (c) A COVENANT FOR THE PURCHASE AND SALE OF A BUSINESS OR
7 THE ASSETS OF A BUSINESS.

8 (4) (a) ANY COVENANT NOT TO COMPETE THAT IS OTHERWISE
9 PERMISSIBLE UNDER SUBSECTION (2) OR (3) OF THIS SECTION IS VOID
10 UNLESS NOTICE OF THE COVENANT NOT TO COMPETE AND THE TERMS
11 OF THE COVENANT NOT TO COMPETE ARE PROVIDED TO:

12 (I) A PROSPECTIVE WORKER BEFORE THE WORKER ACCEPTS THE
13 EMPLOYER'S OFFER OF EMPLOYMENT; OR

14 (II) A CURRENT WORKER AT LEAST FOURTEEN DAYS BEFORE THE
15 EARLIER OF:

16 (A) THE EFFECTIVE DATE OF THE COVENANT; OR

17 (B) THE EFFECTIVE DATE OF ANY ADDITIONAL COMPENSATION OR
18 CHANGE IN THE TERMS OR CONDITIONS OF EMPLOYMENT THAT PROVIDES
19 CONSIDERATION FOR THE COVENANT.

20 (b) AN EMPLOYER SHALL PROVIDE THE NOTICE REQUIRED IN
21 SUBSECTION (4)(a) OF THIS SECTION IN A SEPARATE DOCUMENT FROM ANY
22 OTHER COVENANTS BETWEEN THE WORKER AND EMPLOYER AND IN
23 CLEAR AND CONSPICUOUS TERMS IN THE LANGUAGE IN WHICH THE
24 WORKER AND EMPLOYER COMMUNICATE ABOUT THE WORKER'S
25 PERFORMANCE. THE NOTICE MUST BE SIGNED BY THE WORKER.

26 (c) (I) A WORKER MAY REQUEST AN ADDITIONAL COPY OF THE
27 COVENANT NOT TO COMPETE REQUIRED BY THIS SUBSECTION (4) ONCE

1 EACH CALENDAR YEAR.

2 (II) AN EMPLOYER IS NOT REQUIRED UNDER THIS SUBSECTION (4)
3 TO PROVIDE THE WORKER WITH AN ADDITIONAL COPY OF THE
4 COVENANT NOT TO COMPETE MORE THAN ONCE DURING A CALENDAR
5 YEAR.

6 (d) AN EMPLOYER SATISFIES THE NOTICE REQUIREMENT OF THIS
7 SUBSECTION (4) WHEN THE NOTICE:

8 (I) IS PROVIDED WITH A COPY OF THE AGREEMENT CONTAINING THE
9 COVENANT NOT TO COMPETE;

10 (II) IDENTIFIES THE AGREEMENT BY NAME AND STATES THAT THE
11 AGREEMENT CONTAINS A COVENANT NOT TO COMPETE THAT COULD
12 RESTRICT THE WORKERS' OPTIONS FOR SUBSEQUENT EMPLOYMENT
13 FOLLOWING THEIR SEPARATION FROM THE EMPLOYER; AND

14 (III) DIRECTS THE WORKER TO THE SPECIFIC SECTIONS OR
15 PARAGRAPHS OF THE AGREEMENT THAT CONTAIN THE COVENANT NOT TO
16 COMPETE.

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

27 (b) Notwithstanding ~~subsection (3)(a)~~ SUBSECTION (5)(a) of

1 this section, after termination of an agreement described in subsection
2 ~~(3)(a)~~ SUBSECTION (5)(a) of this section, a physician may disclose his or
3 her continuing practice of medicine and new professional contact
4 information to any patient with a rare disorder, as defined in accordance
5 with criteria developed by the National Organization for Rare Disorders,
6 Inc., or a successor organization, to whom the physician was providing
7 consultation or treatment before termination of the agreement. Neither the
8 physician nor the physician's employer, if any, is liable to any party to the
9 prior agreement for damages alleged to have resulted from the disclosure
10 or from the physician's treatment of the patient after termination of the
11 prior agreement.

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

14 (6) A COVENANT NOT TO COMPETE THAT APPLIES TO A WORKER
15 WHO, AT THE TIME OF TERMINATION OF EMPLOYMENT PRIMARILY RESIDED
16 OR WORKED IN COLORADO, MAY NOT REQUIRE THE WORKER TO
17 ADJUDICATE THE ENFORCEABILITY OF THE COVENANT OUTSIDE OF
18 COLORADO. NOTWITHSTANDING ANY CONTRACTUAL PROVISION TO THE
19 CONTRARY, COLORADO LAW GOVERNS THE ENFORCEABILITY OF A
20 COVENANT NOT TO COMPETE FOR A WORKER WHO AT THE TIME OF
21 TERMINATION OF EMPLOYMENT PRIMARILY RESIDED AND WORKED IN
22 COLORADO.

23 (7) A WORKER WHO IS A PARTY TO A COVENANT NOT TO
24 COMPETE, OR A SUBSEQUENT EMPLOYER THAT HAS HIRED OR IS
25 CONSIDERING HIRING THE WORKER, MAY SEEK A DECLARATORY JUDGMENT
26 FROM A COURT OF COMPETENT JURISDICTION OR AN ARBITRATOR THAT
27 THE COVENANT NOT TO COMPETE IS UNENFORCEABLE.

1 (8) (a) AN EMPLOYER SHALL NOT ENTER INTO, PRESENT TO A
2 WORKER OR PROSPECTIVE WORKER AS A TERM OF EMPLOYMENT, OR
3 ATTEMPT TO ENFORCE ANY COVENANT NOT TO COMPETE THAT IS VOID
4 UNDER THIS SECTION.

5 (b) AN EMPLOYER THAT VIOLATES SUBSECTION (8)(a) OF THIS
6 SECTION IS LIABLE FOR ACTUAL DAMAGES AND A PENALTY OF FIVE
7 THOUSAND DOLLARS PER WORKER OR PROSPECTIVE WORKER HARMED BY
8 THE CONDUCT. THE ATTORNEY GENERAL, THE DIRECTOR OF THE DIVISION
9 OF LABOR STANDARDS AND STATISTICS, AND ANY WORKER OR
10 PROSPECTIVE WORKER HARMED BY AN EMPLOYER'S CONDUCT MAY BRING
11 AN ACTION FOR INJUNCTIVE RELIEF AND TO RECOVER PENALTIES. IN
12 ADDITION TO INJUNCTIVE RELIEF AND THE PENALTY ALLOWED IN THIS
13 SUBSECTION (8)(b), A WORKER OR PROSPECTIVE WORKER MAY RECOVER
14 ACTUAL DAMAGES, REASONABLE COSTS, AND ATTORNEY FEES IN ANY
15 PRIVATE ACTION BROUGHT UNDER THIS SECTION.

16 **SECTION 3. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly; except that, if a referendum petition is filed pursuant
20 to section 1 (3) of article V of the state constitution against this act or an
21 item, section, or part of this act within such period, then the act, item,
22 section, or part will not take effect unless approved by the people at the
23 general election to be held in November 2022 and, in such case, will take
24 effect on the date of the official declaration of the vote thereon by the
25 governor.

26 (2) This act applies to covenants not to compete entered into
27 or renewed on or after the applicable effective date of this act.