

2022 Regular Session

HOUSE BILL NO. 1037

BY REPRESENTATIVE LANDRY

EMPLOYMENT: Provides relative to noncompete contracts or agreements

1 AN ACT

2 To amend and reenact R.S. 23:921(C) through (E), (G)(1), (H), and (J) through (L) and to
3 repeal R.S. 23:921(F)(1)(c), relative to employment contracts or agreements; to
4 allow noncompete contracts or agreements under certain circumstances; to provide
5 for exemptions regarding noncompete contracts or agreements and certain
6 individuals; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:921(C) through (E), (G)(1), (H), and (J) through (L) are hereby
9 amended and reenacted to read as follows:

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

12 * * *

13 C. ~~Any~~ Only upon or in anticipation of termination of employment, any
14 nonexempt person, including a corporation and the individual shareholders of such
15 corporation, who is employed as an agent, servant, or employee may agree with his
16 employer to refrain from carrying on or engaging in a business similar to that of the
17 employer ~~and/or~~ or from soliciting customers of the employer within a specified
18 parish or parishes, municipality or municipalities, or parts thereof, so long as the
19 employer carries on a like business within a physical infrastructure presence therein,
20 not to exceed a period of ~~two years~~ one year from termination of employment. ~~An~~

1 independent contractor, whose work is performed pursuant to a written contract, may
2 enter into an agreement to refrain from carrying on or engaging in a business similar
3 to the business of the person with whom the independent contractor has contracted,
4 on the same basis as if the independent contractor were an employee, for a period not
5 to exceed two years from the date of the last work performed under the written
6 contract. Any purported restrictive covenant provision in any agreement offered to
7 an employee upon or in anticipation of termination of employment shall be
8 specifically identified to the employee and separately initialed by both the employer
9 and employee.

10 D. For the purposes of ~~Subsections B, C, E, F, J, K, and L~~ of this Section, a
11 person who becomes employed by a competing business, regardless of whether or
12 not that person is an owner or equity interest holder of that competing business, may
13 be deemed to be carrying on or engaging in a business similar to that of the party
14 having a contractual right to prevent that person from competing. is exempt and an
15 employer shall not require, request, or attempt to enforce an agreement that includes
16 a noncompete provision for any of the following persons:

17 (1) Any person who is compensated on an hourly basis.

18 (2) Any person who is not considered a highly compensated employee as
19 defined in 29 CFR §541.601.

20 (3) Any person who is employed by an employer who either:

21 (a) Received incentives from the Louisiana Industrial Ad Valorem Tax
22 Exemption Program (ITEP).

23 (b) Received other annual tax incentives from Louisiana taxpayers.

24 (4) Any person who performs manual labor.

25 (5) Any person who is terminated by an employer without cause.

26 (6) Any person who holds a professional license and meets either of the
27 following:

28 (a) Obtained the professional license prior to employment with the employer.

1 members of the agreement were engaged in ultra vires acts. Nothing in Subsection
2 J, K, or L of this Section shall prohibit the transfer, sale, or purchase of stock or
3 interest in publicly traded entities.

4 * * *

5 J. A corporation and the individual shareholders of such corporation, in
6 conjunction with Subsections C and D of this Section, may agree that such
7 shareholders will refrain from carrying on or engaging in a business similar to that
8 of the corporation and from soliciting customers of the corporation within a specified
9 parish or parishes, municipality or municipalities, or parts thereof, for as long as the
10 corporation carries on a similar business therein, not to exceed a period of two years
11 from the date such shareholder ceases to be a shareholder of the corporation. A
12 violation of this Subsection shall be enforceable in accordance with Subsection H of
13 this Section.

14 K. A partnership and the individual partners of such partnership, in
15 conjunction with Subsections C and D of this Section, may agree that such partners
16 will refrain from carrying on or engaging in a business similar to that of the
17 partnership and from soliciting customers of the partnership within a specified parish
18 or parishes, municipality or municipalities, or parts thereof, for as long as the
19 partnership carries on a similar business therein, not to exceed a period of two years
20 from the date such partner ceases to be a partner. A violation of this Subsection shall
21 be enforceable in accordance with Subsection H of this Section.

22 L. A limited liability company and the individual members of such limited
23 liability company, in conjunction with Subsections C and D of this Section, may
24 agree that such members will refrain from carrying on or engaging in a business
25 similar to that of the limited liability company and from soliciting customers of the
26 limited liability company within a specified parish or parishes, municipality or
27 municipalities, or parts thereof, for as long as the limited liability company carries
28 on a similar business therein, not to exceed a period of two years from the date such

- 1 member ceases to be a member. A violation of this Subsection shall be enforceable
2 in accordance with Subsection H of this Section.
3 Section 2. R.S. 23:921(F)(1)(c) is hereby repealed in its entirety.
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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1037 Original

2022 Regular Session

Landry

Abstract: Provides relative to noncompete contracts or agreements.

Present law provides that any person, including a corporation and the individual shareholders of the corporation, who is employed as an agent, servant, or employee may agree to refrain from carrying on or engaging in a business similar to that of the employer or from soliciting customers of the employer within a specified geographical area. Present law further provides that such an agreement may not exceed a period of two years from the date of termination of employment.

Proposed law changes the provision that states that the noncompete agreement applies to any person and proposed law instead provides that such an agreement may only be made upon or in anticipation of termination of employment for any non-exempt person. Proposed law further provides that any noncompete provision in the agreement must be specifically identified to the employee and then initialed by both the employee and employer.

Proposed law also changes the time limitation for noncompete agreements from two years to one year.

Proposed law otherwise retains present law.

Present law provides that an independent contractor, whose work is performed pursuant to a written contract, may enter into a noncompete agreement for a period not to exceed two years from the date of the last work performed under the written contract.

Proposed law repeals present law.

Present law provides that for the purposes of present law, a person who becomes employed by a competing business, regardless of whether or not that person is an owner or equity interest holder of that competing business, may be deemed to be carrying on or engaging in a business similar to that of the party having a contractual right to prevent that person from competing.

Proposed law repeals present law and instead provides that no employer shall require, request, or attempt to enforce an agreement that includes a noncompete provision for any of the following individuals:

- (1) Any person who is compensated on an hourly basis.
- (2) Any person who is not considered a highly compensated employee as defined by federal law.

- (3) Any person who is employed by an employer who either received incentives from the La. Industrial Ad Valorem Tax Exemption Program (ITEP) or received other annual tax incentives from La. taxpayers.
- (4) Any person who performs manual labor.
- (5) Any person who is terminated by an employer without cause.
- (6) Any person who holds a professional license and either obtained the professional license prior to employment with the employer, obtained the professional license independent of the employment duties with the employer, or paid any expenses related to obtaining his professional license.

Present law provides that an employee, an individual partner in a partnership, a shareholder in a corporation, and an individual member of a limited liability corporation (LLC) may agree to a noncompete agreement enforced by the employer, partnership, corporation, and LLC, respectively, not to exceed a period of two years.

Proposed law requires the aforementioned agreements to be in conjunction with provisions of proposed law that provides an exemption from noncompete agreements for certain individuals. Proposed law otherwise retains present law.

Present law provides that parties to a franchise may agree that the employee, who is employed by a franchisor, shall, during his term of employment with the franchisor, refrain from competing with his employer or any of the franchisees of his employer or carrying on or engaging in any other business similar to the franchise. Present law further provides that the noncompete agreement shall not exceed a period of two years following severance of the employment relationship between the franchisor and the employee.

Proposed law repeals present law.

(Amends R.S. 23:921(C)-(E), (G)(1), (H), and (J)-(L); Repeals R.S. 23:921(F)(1)(c))