

ASSEMBLY BILL NO. 149—ASSEMBLYMAN CARRILLO

PREFILED FEBRUARY 13, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to noncompete provisions in employment contracts. (BDR 53-316)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to labor; providing that certain noncompete provisions in employment contracts are against public policy, void and unenforceable; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law generally provides that any person, or any agent or officer acting
2 on behalf of the person, who willfully does anything intended to prevent any former
3 employee of the person from obtaining employment elsewhere in this State: (1) is
4 guilty of a gross misdemeanor and must be punished by a fine of not more than
5 \$5,000; and (2) may be penalized by the Labor Commissioner in an amount not to
6 exceed \$5,000 for each violation. (NRS 613.200) However, this provision of
7 existing law does not prohibit an employer, or any officer or agent of an employer,
8 from negotiating, executing and enforcing a reasonable noncompetition covenant,
9 which is an agreement between an employer and an employee of the employer that
10 prohibits the employee from engaging in competition with the employer or
11 becoming employed with a competitor of the employer for a specified period. (NRS
12 613.200; *Jones v. Deeter*, 112 Nev. 291, 296 (1996))

13 The Nevada Supreme Court has held that a noncompetition covenant “is in
14 restraint of trade and will not be enforced in accordance with its terms unless [the
15 noncompetition covenant] is reasonable.” (*Hansen v. Edwards*, 83 Nev. 189, 191
16 (1967)) According to the Nevada Supreme Court, a noncompetition covenant is
17 reasonable if the restraint set forth in the covenant is not “greater than is required
18 for the protection of the person for whose benefit the restraint is imposed” and does
19 not impose “undue hardship upon the person restricted.” (*Golden Road Motor Inn,
20 Inc. v. Islam*, 132 Nev. Adv. Op. 49 (2016)) In making this determination, the
21 Nevada Supreme Court considers the duration of the restraint imposed on the
22 employee, the territory in which the employee is restrained from employment and
23 the type of employment which the employee is restrained from pursuing. (*Hansen*,



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24 83 Nev. at 191-92; *Jones*, 112 Nev. at 296; *Camco, Inc. v. Baker*, 113 Nev. 512,
25 519-20 (1997); *Golden Road Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49
26 (2016))

27 **Section 1** of this bill codifies the standard established by the Nevada Supreme
28 Court to determine whether a noncompetition covenant is reasonable and, thus,
29 enforceable. However, under **section 1**, a noncompetition covenant is void and
30 unenforceable if the noncompetition covenant prohibits an employee from
31 competing with or becoming employed by a competitor of his or her employer for a
32 period of more than 3 months after the termination of the employee's employment
33 with the employer. **Section 2** of this bill exempts the negotiation, execution and
34 enforcement of reasonable noncompetition covenants from certain penalties only if
35 the noncompetition covenant is enforceable under **section 1**. Thus, under **section 2**,
36 a person who negotiates, executes or enforces a noncompetition covenant that is
37 unenforceable under **section 1**: (1) is guilty of a gross misdemeanor and must be
38 punished by a fine of not more than \$5,000; and (2) may be penalized by the Labor
39 Commissioner in an amount not to exceed \$5,000 for each violation. **Section 3** of
40 this bill provides that the provisions of this bill do not apply to a noncompetition
41 covenant entered into before July 1, 2017, unless the noncompetition covenant is
42 amended or modified after that date.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 613 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. A noncompetition covenant is void and unenforceable*
4 *unless the noncompetition covenant:*

5 *(a) Is supported by valuable consideration;*

6 *(b) Does not impose any restraint that is greater than is*
7 *required for the protection of the employer for whose benefit the*
8 *restraint is imposed; and*

9 *(c) Does not impose an undue hardship upon the employee.*

10 *2. For the purposes of subsection 1, a noncompetition*
11 *covenant that prohibits an employee from pursuing a similar*
12 *vocation in competition with or becoming employed by a*
13 *competitor of his or her employer for a period of more than 3*
14 *months after the termination of the employment of the employee:*

15 *(a) Must be deemed to impose a restraint that is greater than is*
16 *required for the protection of the employer for whose benefit the*
17 *restraint is imposed and impose an undue hardship upon the*
18 *employee; and*

19 *(b) Is against public policy and is void and unenforceable.*

20 *3. As used in this section, "noncompetition covenant" means*
21 *an agreement between an employer and an employee which, upon*
22 *termination of the employment of the employee, prohibits the*
23 *employee from pursuing a similar vocation in competition with or*
24 *becoming employed by a competitor of the employer.*



1 **Sec. 2.** NRS 613.200 is hereby amended to read as follows:
2 613.200 1. Except as otherwise provided in this section, any
3 person, association, company or corporation within this State, or any
4 agent or officer on behalf of the person, association, company or
5 corporation, who willfully does anything intended to prevent any
6 person who for any cause left or was discharged from his, her or its
7 employ from obtaining employment elsewhere in this State is guilty
8 of a gross misdemeanor and shall be punished by a fine of not more
9 than \$5,000.

10 2. In addition to any other remedy or penalty, the Labor
11 Commissioner may impose against each culpable party an
12 administrative penalty of not more than \$5,000 for each such
13 violation.

14 3. If a fine or an administrative penalty is imposed pursuant to
15 this section, the costs of the proceeding, including investigative
16 costs and attorney's fees, may be recovered by the Labor
17 Commissioner.

18 4. The provisions of this section do not prohibit a person,
19 association, company, corporation, agent or officer from
20 negotiating, executing and enforcing an agreement with an
21 employee of the person, association, company or corporation which,
22 upon termination of the employment, prohibits the employee from:

23 (a) Pursuing a similar vocation in competition with or becoming
24 employed by a competitor of the person, association, company or
25 corporation ~~†~~ *if the agreement is enforceable pursuant to section*
26 *1 of this act;* or

27 (b) Disclosing any trade secrets, business methods, lists of
28 customers, secret formulas or processes or confidential information
29 learned or obtained during the course of his or her employment with
30 the person, association, company or corporation ~~†~~
31 ~~→~~ *if the agreement is supported by valuable consideration and is*
32 *otherwise reasonable in its scope and duration.*

33 **Sec. 3.** The amendatory provisions of this act do not apply to a
34 noncompetition covenant entered into before July 1, 2017, unless
35 the noncompetition covenant is amended or modified after that date.

36 **Sec. 4.** This act becomes effective on July 1, 2017.



