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SENATE BILL NO. 82—COMMITTEE ON  
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE LIEUTENANT GOVERNOR)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to employment and trade secrets. (BDR 53-419)

FISCAL NOTE: Effect on Local Government: No.  
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.

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AN ACT relating to employment; prohibiting certain noncompete agreements; increasing the maximum fine for the wrongful acquisition or disclosure of a trade secret; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The “anti-blacklisting” provisions of existing law prohibit a person or business  
2 from doing anything intended to prevent a former employee from obtaining  
3 employment elsewhere in this State. However, this prohibition generally does not  
4 preclude an employer and employee from entering into a “noncompete” agreement,  
5 pursuant to which the employee is barred from pursuing a similar, competing  
6 vocation or becoming the employee of a competitor. Any such agreement must be  
7 supported by consideration and must be reasonable in scope and duration. (NRS  
8 613.200) **Sections 1 and 4** of this bill prohibit an employer from negotiating,  
9 executing or enforcing a noncompete agreement that purports to prohibit an  
10 employee from becoming employed by a “start-up company,” defined as a  
11 corporation that has been incorporated for less than 5 years and meets certain other  
12 criteria. Any such agreement entered into on or after October 1, 2017, is void and  
13 unenforceable.

14 Existing law makes it a felony punishable by imprisonment and a fine of not  
15 more than \$10,000 to wrongfully acquire a trade secret with intent to injure the  
16 owner of the trade secret. (NRS 600A.035) **Section 3** of this bill increases the  
17 maximum amount of such a fine to \$100,000 per violation.



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. *An employer in this State shall not negotiate, execute or*  
4 *attempt to enforce any agreement with an employee pursuant to*  
5 *which the employee is prohibited from becoming employed by a*  
6 *start-up company. To the extent an employer enters into such an*  
7 *agreement, the agreement is void and unenforceable.*

8       2. *A violation of this section is not a criminal offense.*

9       3. *As used in this section, "start-up company" means a*  
10 *corporation that has been incorporated for less than 5 years and*  
11 *meets three or more of the following criteria:*

12       (a) *The corporation has annual profits of less than \$5,000,000.*

13       (b) *The corporation has annual revenues of less than*  
14 *\$50,000,000.*

15       (c) *The corporation employs less than 50 persons.*

16       (d) *The outstanding shares of the corporation have a*  
17 *cumulative worth of less than \$100,000,000.*

18       **Sec. 2.** NRS 613.200 is hereby amended to read as follows:

19       613.200 1. Except as otherwise provided in this section ~~†~~  
20 *and section 1 of this act*, any person, association, company or  
21 corporation within this State, or any agent or officer on behalf of the  
22 person, association, company or corporation, who willfully does  
23 anything intended to prevent any person who for any cause left or  
24 was discharged from his, her or its employ from obtaining  
25 employment elsewhere in this State is guilty of a gross misdemeanor  
26 and shall be punished by a fine of not more than \$5,000.

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

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

35       4. ~~†The~~ *Except as otherwise provided in section 1 of this act,*  
36 *the* provisions of this section do not prohibit a person, association,  
37 company, corporation, agent or officer from negotiating, executing  
38 and enforcing an agreement with an employee of the person,  
39 association, company or corporation which, upon termination of the  
40 employment, prohibits the employee from:



1 (a) Pursuing a similar vocation in competition with or becoming  
2 employed by a competitor of the person, association, company or  
3 corporation; or

4 (b) Disclosing any trade secrets, business methods, lists of  
5 customers, secret formulas or processes or confidential information  
6 learned or obtained during the course of his or her employment with  
7 the person, association, company or corporation,

8 ➤ if the agreement is supported by valuable consideration and is  
9 otherwise reasonable in its scope and duration.

10 **Sec. 3.** NRS 600A.035 is hereby amended to read as follows:

11 600A.035 A person who, with intent to injure an owner of a  
12 trade secret or with reason to believe that his or her actions will  
13 injure an owner of a trade secret, without limitation:

14 1. Steals, misappropriates, takes or conceals a trade secret or  
15 obtains a trade secret through fraud, artifice or deception;

16 2. Wrongfully copies, duplicates, sketches, draws,  
17 photographs, alters, destroys, photocopies, replicates, transmits,  
18 delivers, sends, mails, communicates or conveys a trade secret;

19 3. Receives, buys or possesses a trade secret with knowledge or  
20 reason to know that the trade secret was obtained as described in  
21 subsection 1 or 2;

22 4. Attempts to commit an offense described in subsection 1, 2  
23 or 3;

24 5. Solicits another person to commit an offense described in  
25 subsection 1, 2 or 3; or

26 6. Conspires to commit an offense described in subsection 1, 2  
27 or 3, and one of the conspirators performs an act to further the  
28 conspiracy,

29 ➤ is guilty of a category C felony and shall be punished by  
30 imprisonment in the state prison for a minimum term of not less  
31 than 1 year and a maximum term of not more than 10 years and may  
32 be further punished by a fine of not more than ~~+\$10,000-~~ **\$100,000**  
33 **per violation.**

34 **Sec. 4.** The provisions of section 1 of this act do not apply to  
35 any agreement entered into before October 1, 2017.



