

A-Engrossed
House Bill 2992

Ordered by the House April 9
Including House Amendments dated April 9

Sponsored by Representative NOBLE (at the request of Matt Rupert)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes as condition of enforceability of noncompetition agreement that employer provide signed, written copy of terms of agreement to employee within *[seven]* **30** days after termination of employee's employment.

A BILL FOR AN ACT

1
2 Relating to noncompetition agreements; creating new provisions; and amending ORS 653.295.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 653.295 is amended to read:

5 653.295. (1) A noncompetition agreement entered into between an employer and employee is
6 voidable and may not be enforced by a court of this state unless:

7 (a)(A) The employer informs the employee in a written employment offer received by the em-
8 ployee at least two weeks before the first day of the employee's employment that a noncompetition
9 agreement is required as a condition of employment; or

10 (B) The noncompetition agreement is entered into upon a subsequent bona fide advancement of
11 the employee by the employer;

12 (b) The employee is a person described in ORS 653.020 (3);

13 (c) The employer has a protectable interest. As used in this paragraph, an employer has a
14 protectable interest when the employee:

15 (A) Has access to trade secrets, as that term is defined in ORS 646.461;

16 (B) Has access to competitively sensitive confidential business or professional information that
17 otherwise would not qualify as a trade secret, including product development plans, product launch
18 plans, marketing strategy or sales plans; or

19 (C) Is employed as an on-air talent by an employer in the business of broadcasting and the em-
20 ployer:

21 (i) In the year preceding the termination of the employee's employment, expended resources
22 equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or pub-
23 licly promote the employee, provided that the resources expended by the employer were expended
24 on media that the employer does not own or control; and

25 (ii) Provides the employee, for the time the employee is restricted from working, the greater of
26 compensation equal to at least 50 percent of the employee's annual gross base salary and commis-
27 sions at the time of the employee's termination or 50 percent of the median family income for a
28 four-person family, as determined by the United States Census Bureau for the most recent year

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 available at the time of the employee's termination; [and]

2 (d) The total amount of the employee's annual gross salary and commissions, calculated on an
3 annual basis, at the time of the employee's termination exceeds the median family income for a
4 four-person family, as determined by the United States Census Bureau for the most recent year
5 available at the time of the employee's termination. This paragraph does not apply to an employee
6 described in paragraph (c)(C) of this subsection[.]; **and**

7 **(e) Within 30 days after the date of the termination of the employee's employment, the**
8 **employer provides a signed, written copy of the terms of the noncompetition agreement to**
9 **the employee.**

10 (2) The term of a noncompetition agreement may not exceed 18 months from the date of the
11 employee's termination. The remainder of a term of a noncompetition agreement in excess of 18
12 months is voidable and may not be enforced by a court of this state.

13 (3) Subsections (1) and (2) of this section apply only to noncompetition agreements made in the
14 context of an employment relationship or contract and not otherwise.

15 (4) Subsections (1) and (2) of this section do not apply to:

16 (a) Bonus restriction agreements, which are lawful agreements that may be enforced by the
17 courts in this state; or

18 (b) A covenant not to solicit employees of the employer or solicit or transact business with
19 customers of the employer.

20 (5) Nothing in this section restricts the right of any person to protect trade secrets or other
21 proprietary information by injunction or any other lawful means under other applicable laws.

22 (6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement is en-
23 forceable for the full term of the agreement, for up to 18 months, if the employer provides the em-
24 ployee, for the time the employee is restricted from working, the greater of:

25 (a) Compensation equal to at least 50 percent of the employee's annual gross base salary and
26 commissions at the time of the employee's termination; or

27 (b) Fifty percent of the median family income for a four-person family, as determined by the
28 United States Census Bureau for the most recent year available at the time of the employee's ter-
29 mination.

30 (7) As used in this section:

31 (a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, be-
32 tween an employer and employee under which:

33 (A) Competition by the employee with the employer is limited or restrained after termination
34 of employment, but the restraint is limited to a period of time, a geographic area and specified ac-
35 tivities, all of which are reasonable in relation to the services described in subparagraph (B) of this
36 paragraph;

37 (B) The services performed by the employee pursuant to the agreement include substantial in-
38 volvement in management of the employer's business, personal contact with customers, knowledge
39 of customer requirements related to the employer's business or knowledge of trade secrets or other
40 proprietary information of the employer; and

41 (C) The penalty imposed on the employee for competition against the employer is limited to
42 forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

43 (b) "Broadcasting" means the activity of transmitting of any one-way electronic signal by radio
44 waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

45 (c) "Employee" and "employer" have the meanings given those terms in ORS 652.310.

1 (d) "Noncompetition agreement" means an agreement, written or oral, express or implied, be-
2 tween an employer and employee under which the employee agrees that the employee, either alone
3 or as an employee of another person, will not compete with the employer in providing products,
4 processes or services that are similar to the employer's products, processes or services for a period
5 of time or within a specified geographic area after termination of employment.

6 **SECTION 2. The amendments to ORS 653.295 by section 1 of this 2019 Act apply to non-**
7 **competition agreements entered into on or after the effective date of this 2019 Act.**

8
