



Rep. Kelly M. Burke

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10200SB0672ham001

LRB102 10211 JLS 26819 a

1 AMENDMENT TO SENATE BILL 672

2 AMENDMENT NO. _____. Amend Senate Bill 672 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Freedom to Work Act is amended by
5 changing Sections 5 and 10 and by adding Sections 7, 15, 20,
6 25, 30, 35, and 97 as follows:

7 (820 ILCS 90/5)

8 Sec. 5. Definitions. In this Act:

9 "Adequate consideration" means (1) the employee worked for
10 the employer for at least 2 years after the employee signed an
11 agreement containing a covenant not to compete or a covenant
12 not to solicit or (2) the employer otherwise provided
13 consideration adequate to support an agreement to not compete
14 or to not solicit, which consideration can consist of a period
15 of employment plus additional professional or financial
16 benefits or merely professional or financial benefits adequate

1 by themselves.

2 "Covenant not to compete" means an agreement: ~~(1)~~ between
3 an employer and an a low wage employee that is entered into
4 after the effective date of this amendatory Act of the 102nd
5 General Assembly that restricts the such low wage employee
6 from performing:

7 (1) (A) any work for another employer for a
8 specified period of time;

9 (2) (B) any work in a specified geographical area;
10 or

11 (3) (C) work for another employer that is similar
12 to ~~such low wage~~ employee's work for the employer
13 included as a party to the agreement. ~~;~~ and

14 ~~(2) that is entered into after the effective date of~~
15 ~~this Act.~~

16 "Covenant not to compete" also means an agreement between
17 an employer and an employee, entered into after the effective
18 date of this amendatory Act of the 102nd General Assembly,
19 that by its terms imposes adverse financial consequences on
20 the former employee if the employee engages in competitive
21 activities after the termination of the employee's employment
22 with the employer.

23 "Covenant not to compete" does not include (1) a covenant
24 not to solicit, (2) a confidentiality agreement or covenant,
25 (3) a covenant or agreement prohibiting use or disclosure of
26 trade secrets or inventions, (4) invention assignment

1 agreements or covenants, (5) a covenant or agreement entered
2 into by a person purchasing or selling the goodwill of a
3 business or otherwise acquiring or disposing of an ownership
4 interest, (6) clauses or an agreement between an employer and
5 an employee requiring advance notice of termination of
6 employment, during which notice period the employee remains
7 employed by the employer and receives compensation, or (7)
8 agreements by which the employee agrees not to reapply for
9 employment to the same employer after termination of the
10 employee.

11 "Covenant not to solicit" means an agreement that is
12 entered into after the effective date of this amendatory Act
13 of the 102nd General Assembly between an employer and an
14 employee that (1) restricts the employee from soliciting for
15 employment the employer's employees or (2) restricts the
16 employee from soliciting, for the purpose of selling products
17 or services of any kind to, or from interfering with the
18 employer's relationships with, the employer's clients,
19 prospective clients, vendors, prospective vendors, suppliers,
20 prospective suppliers, or other business relationships.

21 "Earnings" means the compensation, including earned
22 salary, earned bonuses, earned commissions, or any other form
23 of taxable compensation, reflected or that is expected to be
24 reflected as wages, tips, and other compensation on the
25 employee's IRS Form W-2 plus any elective deferrals not
26 reflected as wages, tips, and other compensation on the

1 employee's IRS Form W-2, such as, without limitation, employee
2 contributions to a 401(k) plan, a 403(b) plan, a flexible
3 spending account, or a health savings account, or commuter
4 benefit-related deductions.

5 "Employee" means any individual permitted to work by an
6 employer in an occupation.

7 "Employer" has the meaning given to such term in
8 subsection (c) of Section 3 of the Minimum Wage Law.

9 "Employer" does not include governmental or quasi-governmental
10 bodies.

11 "Construction" means any constructing, altering,
12 reconstructing, repairing, rehabilitating, refinishing,
13 refurbishing, remodeling, remediating, renovating, custom
14 fabricating, maintenance, landscaping, improving, wrecking,
15 painting, decorating, demolishing, and adding to or
16 subtracting from any building, structure, highway, roadway,
17 street, bridge, alley, sewer, ditch, sewage disposal plant,
18 water works, parking facility, railroad, excavation or other
19 structure, project, development, real property or improvement,
20 or to do any part thereof, whether or not the performance of
21 the work herein described involves the addition to, or
22 fabrication into, any structure, project, development, real
23 property or improvement herein described of any material or
24 article of merchandise.

25 ~~"Low wage employee" means an employee whose earnings do~~
26 ~~not exceed the greater of (1) the hourly rate equal to the~~

1 ~~minimum wage required by the applicable federal, State, or~~
2 ~~local minimum wage law or (2) \$13.00 per hour.~~

3 (Source: P.A. 99-860, eff. 1-1-17; 100-225, eff. 8-18-17.)

4 (820 ILCS 90/7 new)

5 Sec. 7. Legitimate business interest of the employer. In
6 determining the legitimate business interest of the employer,
7 the totality of the facts and circumstances of the individual
8 case shall be considered. Factors that may be considered in
9 this analysis include, but are not limited to, the employee's
10 exposure to the employer's customer relationships or other
11 employees, the near-permanence of customer relationships, the
12 employee's acquisition, use, or knowledge of confidential
13 information through the employee's employment, the time
14 restrictions, the place restrictions, and the scope of the
15 activity restrictions. No factor carries any more weight than
16 any other, but rather its importance will depend on the
17 specific facts and circumstances of the individual case. Such
18 factors are only non-conclusive aids in determining the
19 employer's legitimate business interest, which in turn is but
20 one component in the 3-prong rule of reason, grounded in the
21 totality of the circumstances. Each situation must be
22 determined on its own particular facts. Reasonableness is
23 gauged not just by some, but by all of the circumstances. The
24 same identical contract and restraint may be reasonable and
25 valid under one set of circumstances and unreasonable and

1 invalid under another set of circumstances.

2 (820 ILCS 90/10)

3 Sec. 10. Prohibiting covenants not to compete and
4 covenants not to solicit for low wage employees.

5 (a) No employer shall enter into a covenant not to compete
6 with any employee unless the employee's actual or expected
7 annualized rate of earnings exceeds \$75,000 per year. This
8 amount shall increase to \$80,000 per year beginning on January
9 1, 2027, \$85,000 per year beginning on January 1, 2032, and
10 \$90,000 per year beginning on January 1, 2037. A covenant not
11 to compete entered into in violation of this subsection is
12 void and unenforceable. No employer shall enter into a
13 covenant not to compete with any low wage employee of the
14 employer.

15 (b) No employer shall enter into a covenant not to solicit
16 with any employee unless the employee's actual or expected
17 annualized rate of earnings exceeds \$45,000 per year. This
18 amount shall increase to \$47,500 per year beginning on January
19 1, 2027, \$50,000 per year beginning on January 1, 2032, and
20 \$52,500 per year beginning on January 1, 2037. A covenant not
21 to solicit entered into in violation of this subsection is
22 void and unenforceable. A covenant not to compete entered into
23 between an employer and a low wage employee is illegal and
24 void.

25 (c) No employer shall enter into a covenant not to compete

1 or a covenant not to solicit with any employee who an employer
2 terminates or furloughs or lays off as the result of business
3 circumstances or governmental orders related to the COVID-19
4 pandemic or under circumstances that are similar to the
5 COVID-19 pandemic, unless enforcement of the covenant not to
6 compete includes compensation equivalent to the employee's
7 base salary at the time of termination for the period of
8 enforcement minus compensation earned through subsequent
9 employment during the period of enforcement. A covenant not to
10 compete or a covenant not to solicit entered into in violation
11 of this subsection is void and unenforceable.

12 (d) A covenant not to compete is void and illegal with
13 respect to individuals covered by a collective bargaining
14 agreement under the Illinois Public Labor Relations Act or the
15 Illinois Educational Labor Relations Act and individuals
16 employed in construction. This subsection (d) does not apply
17 to construction employees who primarily perform management,
18 engineering or architectural, design, or sales functions for
19 the employer or who are shareholders, partners, or owners in
20 any capacity of the employer.

21 (Source: P.A. 99-860, eff. 1-1-17.)

22 (820 ILCS 90/15 new)

23 Sec. 15. Enforceability of a covenant not to compete or a
24 covenant not to solicit. A covenant not to compete or a
25 covenant not to solicit is illegal and void unless (1) the

1 employee receives adequate consideration, (2) the covenant is
2 ancillary to a valid employment relationship, (3) the covenant
3 is no greater than is required for the protection of a
4 legitimate business interest of the employer, (4) the covenant
5 does not impose undue hardship on the employee, and (5) the
6 covenant is not injurious to the public.

7 (820 ILCS 90/20 new)

8 Sec. 20. Ensuring employees are informed about their
9 obligations. A covenant not to compete or a covenant not to
10 solicit is illegal and void unless (1) the employer advises
11 the employee in writing to consult with an attorney before
12 entering into the covenant and (2) the employer provides the
13 employee with a copy of the covenant at least 14 calendar days
14 before the commencement of the employee's employment or the
15 employer provides the employee with at least 14 calendar days
16 to review the covenant. An employer is in compliance with this
17 Section even if the employee voluntarily elects to sign the
18 covenant before the expiration of the 14-day period.

19 (820 ILCS 90/25 new)

20 Sec. 25. Remedies. In addition to any remedies available
21 under any agreement between an employer and an employee or
22 under any other statute, in a civil action or arbitration
23 filed by an employer (including, but not limited to, a
24 complaint or counterclaim), if an employee prevails on a claim

1 to enforce a covenant not to compete or a covenant not to
2 solicit, the employee shall recover from the employer all
3 costs and all reasonable attorney's fees regarding such claim
4 to enforce a covenant not to compete or a covenant not to
5 solicit, and the court or arbitrator may award appropriate
6 relief.

7 (820 ILCS 90/30 new)

8 Sec. 30. Attorney General enforcement.

9 (a) Whenever the Attorney General has reasonable cause to
10 believe that any person or entity is engaged in a pattern and
11 practice prohibited by this Act, the Attorney General may
12 initiate or intervene in a civil action in the name of the
13 People of the State in any appropriate court to obtain
14 appropriate relief.

15 (b) Before initiating an action, the Attorney General may
16 conduct an investigation and may: (1) require an individual or
17 entity to file a statement or report in writing under oath or
18 otherwise, as to all information the Attorney General may
19 consider necessary; (2) examine under oath any person alleged
20 to have participated in or with knowledge of the alleged
21 violation; or (3) issue subpoenas or conduct hearings in aid
22 of any investigation.

23 (c) Service by the Attorney General of any notice
24 requiring a person or entity to file a statement or report, or
25 of a subpoena upon any person or entity, shall be made:

1 (1) personally by delivery of a duly executed copy
2 thereof to the person to be served or, if a person is not a
3 natural person, in the manner provided in the Code of
4 Civil Procedure when a complaint is filed; or

5 (2) by mailing by certified mail a duly executed copy
6 thereof to the person to be served at his or her last known
7 abode or principal place of business within this State or,
8 if a person is not a natural person, in the manner provided
9 in the Code of Civil Procedure when a complaint is filed.

10 The Attorney General may compel compliance with
11 investigative demands under this Section through an order by
12 any court of competent jurisdiction.

13 (d) (1) In an action brought under this Act, the Attorney
14 General may obtain, as a remedy, monetary damages to the
15 State, restitution, and equitable relief, including any
16 permanent or preliminary injunction, temporary restraining
17 order, or other order, including an order enjoining the
18 defendant from engaging in a violation, or order any action as
19 may be appropriate. In addition, the Attorney General may
20 request and the court may impose a civil penalty not to exceed
21 \$5,000 for each violation or \$10,000 for each repeat violation
22 within a 5-year period. For purposes of this Section, each
23 violation of this Act for each person who was subject to an
24 agreement in violation of this Act shall constitute a separate
25 and distinct violation.

26 (2) A civil penalty imposed under this subsection shall be

1 deposited into the Attorney General Court Ordered and
2 Voluntary Compliance Payment Projects Fund. Moneys in the Fund
3 shall be used, subject to appropriation, for the performance
4 of any function pertaining to the exercise of the duties of the
5 Attorney General, including but not limited to enforcement of
6 any law of this State and conducting public education
7 programs; however, any moneys in the Fund that are required by
8 the court or by an agreement to be used for a particular
9 purpose shall be used for that purpose.

10 (820 ILCS 90/35 new)

11 Sec. 35. Reformation.

12 (a) Extensive judicial reformation of a covenant not to
13 compete or a covenant not to solicit may be against the public
14 policy of this State and a court may refrain from wholly
15 rewriting contracts.

16 (b) In some circumstances, a court may, in its discretion,
17 choose to reform or sever provisions of a covenant not to
18 compete or a covenant not to solicit rather than hold such
19 covenant unenforceable. Factors which may be considered when
20 deciding whether such reformation is appropriate include the
21 fairness of the restraints as originally written, whether the
22 original restriction reflects a good-faith effort to protect a
23 legitimate business interest of the employer, the extent of
24 such reformation, and whether the parties included a clause
25 authorizing such modifications in their agreement.

1 (820 ILCS 90/97 new)

2 Sec. 97. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4 Section 99. Effective date. This Act takes effect January
5 1, 2022.".