

HOUSE BILL NO. 2787

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KEATHLEY.

5675H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 431, RSMo, by adding thereto nineteen new sections relating to restrictive employment agreements, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 431, RSMo, is amended by adding thereto nineteen new sections,
2 to be known as sections 431.300, 431.302, 431.304, 431.306, 431.308, 431.310, 431.312,
3 431.314, 431.316, 431.318, 431.320, 431.322, 431.324, 431.326, 431.328, 431.330, 431.332,
4 431.334, and 431.338, to read as follows:

**431.300. Sections 431.300 to 431.338 may be cited as the "Uniform Restrictive
2 Employment Agreement Act".**

431.302. In sections 431.300 to 431.338:

2 **(1) "Confidentiality agreement" means a restrictive employment agreement**
3 **that:**

4 **(a) Prohibits a worker from using or disclosing information; and**

5 **(b) Is not a condition of settlement or other resolution of a dispute;**

6 **(2) "Electronic" means relating to technology having electrical, digital,**
7 **magnetic, wireless, optical, electromagnetic, or similar capabilities;**

8 **(3) "Employer" means a person that hires or contracts with a worker to work**
9 **for the person;**

10 **(4) "No-business agreement" means a restrictive employment agreement that**
11 **prohibits a worker from working for a client or customer of the employer;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (5) "Noncompete agreement" means a restrictive employment agreement that
13 prohibits a worker from working other than for the employer. The term does not
14 include a no-business agreement;

15 (6) "Nonsolicitation agreement" means a restrictive employment agreement that
16 prohibits a worker from soliciting a client or customer of the employer;

17 (7) "No-recruit agreement" means a restrictive employment agreement that
18 prohibits a worker from hiring or recruiting another worker of the employer;

19 (8) "Payment-for-competition agreement" means a restrictive employment
20 agreement that imposes an adverse financial consequence on a worker for working
21 other than for the employer but does not expressly prohibit the work;

22 (9) "Person" means an individual, estate, business or nonprofit entity, or other
23 legal entity. The term does not include a public corporation or government or
24 governmental subdivision, agency, or instrumentality;

25 (10) "Record" means information:

26 (a) Inscribed on a tangible medium; or

27 (b) Stored in an electronic or other medium and retrievable in perceivable form;

28 (11) "Restrictive employment agreement" means an agreement or part of
29 another agreement between an employer and worker that prohibits, limits, or sets a
30 condition on working other than for the employer after the work relationship ends or a
31 sale of a business is consummated. The term includes a confidentiality agreement, no-
32 business agreement, noncompete agreement, nonsolicitation agreement, no-recruit
33 agreement, payment-for-competition agreement, and training-repayment agreement;

34 (12) "Sale of a business" means sale, merger, consolidation, amalgamation,
35 reorganization, or other transaction, however denominated, of:

36 (a) All or part of a business or nonprofit entity or association, or all or part of its
37 assets; or

38 (b) A substantial ownership interest in the entity or association;

39 (13) "Sign" means, with present intent to authenticate or adopt a record:

40 (a) Execute or adopt a tangible symbol; or

41 (b) Attach to or logically associate with the record an electronic symbol, sound,
42 or process;

43 (14) "Signed agreement" means a restrictive employment agreement signed by
44 the worker and employer;

45 (15) "Special training" means instruction or other education a worker receives
46 from a source other than the employer that:

47 (a) Is designed to enhance the ability of the worker to perform the worker's
48 work;

49 (b) Is not normally received by other workers; and

50 (c) Requires a significant and identifiable expenditure by the employer distinct
51 from ordinary on-the-job training;

52 (16) "Stated rate of pay" means the compensation, calculated on an annualized
53 basis, an employer agrees to pay a worker. The term:

54 (a) Includes a wage, salary, professional fee, other compensation for personal
55 service, and the fair market value of all remuneration other than cash; and

56 (b) Does not include:

57 a. A healthcare benefit, severance pay, retirement benefit, or expense
58 reimbursement;

59 b. Distribution of earnings and profit that is not compensation for personal
60 service; or

61 c. Anticipated but indeterminable compensation, including a tip, bonus, or
62 commission;

63 (17) "Trade secret" has the meaning as such term is defined under section
64 417.453;

65 (18) "Training-repayment agreement" means a restrictive employment
66 agreement that requires a worker to repay the employer for training costs incurred
67 by the employer;

68 (19) "Work" means providing service;

69 (20) "Worker" means an individual who works for an employer. The term:

70 (a) Includes an employee, independent contractor, extern, intern, volunteer,
71 apprentice, sole proprietor who provides service to a client or customer, and an
72 individual who provides service through a business or nonprofit entity or association;

73 (b) Does not include an individual, even if the individual performs incidental
74 service for the employer, whose sole relationship with the employer is:

75 a. As a member of a board of directors or other governing or advisory board;

76 b. An individual under whose authority the powers of a business or nonprofit
77 entity or association are exercised;

78 c. An investor; or

79 d. A vendor of goods.

431.304. 1. Sections 431.300 to 431.338 apply to a restrictive employment
2 agreement. If a restrictive employment agreement is part of another agreement,
3 sections 431.300 to 431.338 do not affect other parts of the other agreement.

4 2. Sections 431.300 to 431.338 supersede common law only to the extent that
5 sections 431.300 to 431.338 apply to a restrictive employment agreement but otherwise
6 does not affect principles of law and equity consistent with sections 431.300 to 431.338.

7 **3. Sections 431.300 to 431.338 do not affect an agreement to take an action solely**
8 **to transfer, perfect, or enforce a patent, copyright, trade secret, or similar right.**

9 **4. Sections 431.300 to 431.338 do not affect a noncompetition obligation arising**
10 **solely as a result of an existing ownership interest in a business entity.**

11 **5. Sections 431.300 to 431.338 do not affect an agreement that requires a worker**
12 **to forfeit compensation after the work relationship ends, including vacation or**
13 **retirement benefits, the right to which accrued before the work relationship ends.**

431.306. 1. Except as provided in subsection 5 of this section, a restrictive
2 **employment agreement is prohibited and unenforceable unless:**

3 **(1) The employer provides a copy of the proposed agreement in a record to:**

4 **(a) Subject to subsection 2 of this section, a prospective worker, at least fourteen**
5 **days before the prospective worker accepts work or commences work, whichever is**
6 **earlier;**

7 **(b) A current worker who receives a material increase in compensation, at least**
8 **fourteen days before the increase or the worker accepts a change in job status or**
9 **responsibilities, whichever is earlier; or**

10 **(c) A departing worker who is given consideration in addition to anything of**
11 **value to which the worker already is entitled, at least fourteen days before the**
12 **agreement is required to be signed;**

13 **(2) With the copy of the proposed agreement provided under subdivision (1) of**
14 **this subsection, the employer provides the worker in a record the separate notice, in the**
15 **preferred language of the worker if available, prescribed by the department of labor**
16 **and industrial relations under subsection 4 of this section;**

17 **(3) The proposed agreement and the signed agreement clearly specify the**
18 **information, type of work activity, or extent of competition that the agreement**
19 **prohibits, limits, or sets conditions on after the work relationship ends;**

20 **(4) The agreement is in a record separately signed by the worker and employer**
21 **and the employer promptly provides the worker a copy of the signed agreement; and**

22 **(5) Subject to subsection 3 of this section, the employer provides an additional**
23 **copy of the agreement to the worker, not later than fourteen days after the worker, in a**
24 **record, requests a copy, unless the employer reasonably and in good faith is unable to**
25 **provide the copy not later than fourteen days after the request and the worker is not**
26 **prejudiced by the delay.**

27 **2. A worker may waive the fourteen-day requirement of paragraph (a) of**
28 **subdivision (1) of subsection 1 of this section if the worker receives the signed agreement**
29 **before beginning work. If the worker waives the requirement, the worker may rescind**

30 the entire employment agreement not later than fourteen days after the worker receives
31 the agreement.

32 3. An employer is not required under subdivision (5) of subsection 1 of this
33 section to provide an additional copy of the agreement more than once during a
34 calendar year.

35 4. The department of labor and industrial relations shall prescribe the notice an
36 employer must provide under subdivision (2) of subsection 1 of this section. The notice
37 must inform the worker, in language an average reader can understand, of the
38 requirements of sections 431.300 to 431.338, including the requirements of subsection 1
39 of this section and sections 431.308 to 431.326 and state that sections 431.300 to 431.338
40 establish penalties against an employer that enters into a prohibited agreement. The
41 department of labor and industrial relations shall make the notice available to
42 employers on its publicly accessible website or in other appropriate ways. The
43 department of labor and industrial relations may:

44 (1) Produce a separate notice for each type of restrictive employment agreement;
45 and

46 (2) Translate the notice into languages other than English used by a substantial
47 portion of the state's labor force.

48 5. This section does not apply to a restrictive employment agreement in
49 connection with the sale of a business of which the worker is a substantial owner and
50 consents to the sale.

 431.308. A restrictive employment agreement, other than a confidentiality
2 agreement or training-repayment agreement, is:

3 (1) Prohibited and unenforceable if, when the worker signs the agreement, the
4 worker has a stated rate of pay less than the annual mean wage of employees in this
5 state as determined by the United States Department of Labor, Bureau of Labor
6 Statistics; and

7 (2) Unenforceable if, at any time during the work relationship, the worker's
8 compensation from the employer, calculated on an annualized basis, is less than the
9 annual mean wage of employees in this state as determined by the United States
10 Department of Labor, Bureau of Labor Statistics.

 431.310. A restrictive employment agreement, other than a confidentiality
2 agreement or training-repayment agreement, is unenforceable if:

3 (1) the worker resigns for good cause attributable to the employer; or

4 (2) the employer terminates the worker for a reason other than willful
5 misconduct or the completion of the agreed work or the term of the contract.

2 **431.312. A restrictive employment agreement is prohibited and unenforceable**
3 **unless it is reasonable.**

4 **431.314. A noncompete agreement is prohibited and unenforceable unless:**

5 **(1) The agreement protects any of the following legitimate business interests:**

6 **(a) The sale of a business of which the worker is a substantial owner and**
7 **consents to the sale;**

8 **(b) The creation of a business in which the worker is a substantial owner;**

9 **(c) A trade secret; or**

10 **(d) An ongoing client or customer relationship of the employer;**

11 **(2) When the worker signs the agreement and through the time of enforcement,**
12 **the agreement is narrowly tailored in duration, geographical area, and scope of actual**
13 **competition to protect an interest under subdivision (1) of this section, and the interest**
14 **cannot be protected adequately by another restrictive employment agreement; and**

15 **(3) The prohibition on competition lasts not longer than:**

16 **(a) Five years after the work relationship ends when protecting an interest under**
17 **paragraph (a) or (b) of subdivision (1) of this section; or**

18 **(b) One year after the work relationship ends when protecting an interest under**
19 **paragraph (c) or (d) of subdivision (1) of this section but not an interest under**
20 **paragraph (a) or (b) of subdivision (1) of this section.**

21 **431.316. A confidentiality agreement is prohibited and unenforceable unless the**
22 **worker may use and disclose information that:**

23 **(1) Arises from the worker's general training, knowledge, skill, or experience,**
24 **whether gained on the job or otherwise;**

25 **(2) Is readily ascertainable to the relevant public; or**

26 **(3) Is irrelevant to the employer's business.**

27 **431.318. A no-business agreement is prohibited and unenforceable unless the**
28 **agreement:**

29 **(1) Applies only to a prospective or ongoing client or customer of the employer**
30 **with which the worker had worked personally; and**

31 **(2) Lasts not longer than six months after the work relationship between the**
32 **employer and worker ends.**

33 **431.320. A nonsolicitation agreement is prohibited and unenforceable unless the**
34 **agreement:**

35 **(1) Applies only to a prospective or ongoing client or customer of the employer**
36 **with which the worker had worked personally; and**

37 **(2) Lasts not longer than one year after the work relationship between the**
38 **employer and worker ends.**

431.322. A no-recruit agreement is prohibited and unenforceable unless the agreement prohibits hiring or recruiting only:

(1) Another worker currently working for the employer with whom the worker had worked personally; and

(2) Lasts not longer than six months after the work relationship between the employer and worker ends.

431.324. A payment-for-competition agreement is prohibited and unenforceable unless the agreement:

(1) Imposes a financial consequence that is not greater than the actual competitive harm to the employer; and

(2) Lasts not longer than one year after the work relationship between the employer and worker ends.

431.326. A training-repayment agreement is prohibited and unenforceable unless the agreement:

(1) Requires repayment only of the cost of special training;

(2) Lasts not longer than two years after the special training is completed; and

(3) Prorates the repayment for work done during the post-training period.

431.328. Except as provided under subsection 2 of section 431.306 or in the context of resolving an issue in litigation or other dispute resolution, a party to a restrictive employment agreement may not waive a requirement of sections 431.300 to 431.338 or stipulate to a fact to avoid a requirement of sections 431.300 to 431.338.

431.330. 1. The court may not modify a restrictive employment agreement that restricts a worker beyond a period imposed under sections 431.300 to 431.338 to make the agreement enforceable. The court may modify an agreement that otherwise violates sections 431.300 to 431.338 only on a finding that the employer reasonably and in good faith believed the agreement was enforceable under sections 431.300 to 431.338 and only to the extent necessary to protect the employer's interest and render the agreement enforceable.

2. A worker who is a party to a restrictive employment agreement or a subsequent employer that has hired or is considering hiring the worker may seek a declaratory judgment that the agreement is unenforceable.

3. In addition to other judicial remedies, a court may award statutory damages under subsection 5 of this section and in a private action reasonable attorney's fees to a party that successfully challenges or defends against enforceability of a restrictive employment agreement or proves a violation of sections 431.300 to 431.338.

4. An employer seeking to enforce a restrictive employment agreement has the burden of proving compliance with sections 431.300 to 431.338.

17 **5. An employer that enters a restrictive employment agreement that the**
18 **employer knows or reasonably should know is prohibited by sections 431.300 to 431.338**
19 **commits a civil violation. The department of labor and industrial relations or the**
20 **attorney general may bring an action on behalf of the worker, or the worker may bring**
21 **a private action, against the employer to enforce this subsection. The court may award**
22 **statutory damages of not more than five thousand dollars per worker per agreement for**
23 **each violation of this subsection.**

431.332. 1. A choice of law provision that applies to a restrictive employment
2 **agreement is prohibited and unenforceable unless it requires that a dispute arising**
3 **under the agreement be governed by the law of the jurisdiction where the worker**
4 **primarily works for the employer or, if the work relationship has ended, the jurisdiction**
5 **where the worker primarily worked when the relationship ended.**

6 **2. A choice of venue provision that applies to a restrictive employment**
7 **agreement is prohibited and unenforceable unless it requires that a dispute arising**
8 **under the agreement be decided in a jurisdiction where:**

9 **(1) The worker primarily works or, if the work relationship has ended, a**
10 **jurisdiction where the worker primarily worked when the relationship ended; or**

11 **(2) The worker resides at the time of the dispute.**

431.334. In applying and construing this uniform act, a court shall consider the
2 **promotion of uniformity of the law among jurisdictions that enact it.**

431.338. 1. Except as provided in this section, sections 431.300 to 431.338 do not
2 **affect the validity of a restrictive employment agreement in effect before August 28,**
3 **2024.**

4 **2. The provisions of subdivision (5) of subsection 1 of section 431.306 and section**
5 **431.308 apply to a restrictive employment agreement entered into before, on, or after**
6 **August 28, 2024.**

✓