

HOUSE COMMITTEE OF REFERENCE REPORT

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Chair of Committee

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Date

April 6, 2022

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB22-1317 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 2, line 4 strike "**employee**" and substitute  
2 "**worker**".

3 Page 3, line 3, strike "(I)".

4 Page 3, line 5, strike "EARNING" and substitute "WHO, AT BOTH THE TIME  
5 THE COVENANT NOT TO COMPETE IS ENTERED INTO AND AT THE TIME THE  
6 COVENANT IS ENFORCED, EARNS".

7 Page 3, strike lines 7 through 13 and substitute "COVENANT NOT TO  
8 COMPETE IS FOR THE PROTECTION OF TRADE SECRETS AND IS NO BROADER  
9 THAN IS REASONABLY NECESSARY TO PROTECT THE EMPLOYER'S  
10 LEGITIMATE INTEREST IN PROTECTING TRADE SECRETS.

11 ~~(a) Any contract for the purchase and sale of a business or the~~  
12 ~~assets of a business;~~

13 ~~(b) Any contract for the protection of trade secrets;~~

14 (c) AS USED IN SUBSECTION (2)(b) OF THIS SECTION:

15 (I) "CASH COMPENSATION" MEANS THE COMPENSATION,  
16 INCLUDING EARNED SALARY, EARNED BONUSES, EARNED COMMISSIONS, OR  
17 ANY OTHER FORM OF TAXABLE COMPENSATION, REFLECTED AS WAGES,  
18 TIPS, AND OTHER COMPENSATION ON THE WORKER'S IRS FORM W-2 OR  
19 1099 PLUS ANY ELECTIVE DEFERRALS NOT REFLECTED AS WAGES, TIPS,  
20 AND OTHER COMPENSATION ON THE WORKER'S FEDERAL FORM W-2,  
21 INCLUDING EMPLOYEE CONTRIBUTIONS TO A 401(k) PLAN, 403(b) PLAN,  
22 FLEXIBLE SPENDING ACCOUNT, OR HEALTH SAVINGS ACCOUNT, OR  
23 COMMUTER BENEFIT-RELATED DEDUCTIONS OR THE AMOUNT OF  
24 COMPENSATION A WORKER WOULD HAVE EARNED, BUT FOR A LEAVE OF  
25 ABSENCE TAKEN VOLUNTARILY BY THE WORKER.

1 (II) "THRESHOLD AMOUNT".

2 Page 4, strike lines 4 through 6 and substitute "SERVED AN EMPLOYER FOR  
3 A PERIOD OF LESS THAN TWO YEARS, WHERE THE TRAINING IS DISTINCT  
4 FROM NORMAL, ON-THE-JOB TRAINING, THE EMPLOYER'S RECOVERY IS  
5 LIMITED TO THE REASONABLE COSTS OF SUCH TRAINING AND IS PRORATED  
6 OVER THE COURSE OF THE TWO YEARS SUBSEQUENT TO THE TRAINING, AND  
7 THE EMPLOYER RECOVERING FOR THE COSTS OF THE TRAINING WOULD NOT  
8 VIOLATE THE "FAIR LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201  
9 ET SEQ., OR ARTICLE 4 OF TITLE 8;"

10 Page 4, line 11, strike "OR".

11 Page 4, strike line 12 and substitute "PUBLIC, OR INFORMATION THAT A  
12 WORKER OTHERWISE HAS A RIGHT TO DISCLOSE AS LEGALLY PROTECTED  
13 CONDUCT;

14 (c) A COVENANT FOR THE PURCHASE AND SALE OF A BUSINESS OR  
15 THE ASSETS OF A BUSINESS."

16 Page 5, after line 13 insert:

17 "(d) AN EMPLOYER SATISFIES THE NOTICE REQUIREMENT OF THIS  
18 SUBSECTION (4) WHEN THE NOTICE:

19 (I) IS PROVIDED WITH A COPY OF THE AGREEMENT CONTAINING THE  
20 COVENANT NOT TO COMPETE;

21 (II) IDENTIFIES THE AGREEMENT BY NAME AND STATES THAT THE  
22 AGREEMENT CONTAINS A COVENANT NOT TO COMPETE THAT COULD  
23 RESTRICT THE WORKERS' OPTIONS FOR SUBSEQUENT EMPLOYMENT  
24 FOLLOWING THEIR SEPARATION FROM THE EMPLOYER; AND

25 (III) DIRECTS THE WORKER TO THE SPECIFIC SECTIONS OR  
26 PARAGRAPHS OF THE AGREEMENT THAT CONTAIN THE COVENANT NOT TO  
27 COMPETE."

28 Page 5, line 14, after "(5)" insert "(a)".

29 Page 5, strike lines 24 through 27.

30 Page 6, strike lines 1 through 7 and substitute:

31 "(b) Notwithstanding ~~subsection (3)(a)~~ SUBSECTION (5)(a) of this  
32 section, after termination of an agreement described in ~~subsection (3)(a)~~  
33 SUBSECTION (5)(a) of this section, a physician may disclose his or her  
34 continuing practice of medicine and new professional contact information

1 to any patient with a rare disorder, as defined in accordance with criteria  
2 developed by the National Organization for Rare Disorders, Inc., or a  
3 successor organization, to whom the physician was providing consultation  
4 or treatment before termination of the agreement. Neither the physician  
5 nor the physician's employer, if any, is liable to any party to the prior  
6 agreement for damages alleged to have resulted from the disclosure or  
7 from the physician's treatment of the patient after termination of the prior  
8 agreement."

9 Page 6, strike lines 10 through 27 and substitute:

10 "(6) A COVENANT NOT TO COMPETE THAT APPLIES TO A WORKER  
11 WHO, AT THE TIME OF TERMINATION OF EMPLOYMENT PRIMARILY RESIDED  
12 OR WORKED IN COLORADO, MAY NOT REQUIRE THE WORKER TO  
13 ADJUDICATE THE ENFORCEABILITY OF THE COVENANT OUTSIDE OF  
14 COLORADO. NOTWITHSTANDING ANY CONTRACTUAL PROVISION TO THE  
15 CONTRARY, COLORADO LAW GOVERNS THE ENFORCEABILITY OF A  
16 COVENANT NOT TO COMPETE FOR A WORKER WHO AT THE TIME OF  
17 TERMINATION OF EMPLOYMENT PRIMARILY RESIDED AND WORKED IN  
18 COLORADO."

19 Page 7, lines 1 and 2 strike "A RESTRICTIVE EMPLOYMENT AGREEMENT  
20 OR".

21 Page 7, line 8, strike "AN" and substitute "A".

22 Page 7, line 21, strike "DAMAGES" and substitute "DAMAGES,  
23 REASONABLE COSTS, AND ATTORNEY FEES".

24 Page 8, line 6 strike "restrictive employment agreements or".

25 Strike "RESTRICTIVE EMPLOYMENT AGREEMENT OR" on: **Page 2**, line 12;  
26 **Page 3**, lines 3 and 4, and 19; **Page 4**, lines 13, 15 and 16, and 17; **Page**  
27 **5**, lines 8 and 12; and **Page 7**, lines 5 and 6 and 10.

28 Strike "AGREEMENT OR" on: **Page 4**, lines 23 and 26.

29 Strike "AGREEMENTS OR" on: **Page 3**, line 27; and **Page 5**, line 2.

30 Strike "EMPLOYEE" and substitute "WORKER" on: **Page 4**, lines 19 two  
31 times, and 21; **Page 5**, lines 2, 4, 6, and 11; and **Page 7**, lines 4, 9 two  
32 times, 14 two times, 16, 17, and 20 the second time.

- 1 Strike "EMPLOYEES" and substitute "WORKERS" on: **Page 3**, lines 6, 14,
- 2 and 15.
  
- 3 Strike "EMPLOYEE'S" and substitute "WORKER'S" on: **Page 4**, line 9; and
- 4 **Page 5**, line 5.
  
- 5 Strike "ANEMPLOYEE" and substitute "A WORKER" on: **Page 4**, line 3; and
- 6 **Page 7**, line 20.
  
- 7 Strike "ANEMPLOYEE" and substitute "A WORKER" on: **Page 5**, line 7; and
- 8 **Page 7**, line 1.

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