

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0690.01 Yelana Love x2295

HOUSE BILL 22-1216

HOUSE SPONSORSHIP

Tipper,

SENATE SPONSORSHIP

Bridges,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF RESTRICTIVE EMPLOYMENT
102 AGREEMENTS THROUGH THE ENACTMENT OF THE "UNIFORM
103 RESTRICTIVE EMPLOYMENT AGREEMENT ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Restrictive Employment Agreement Act" as drafted by the Uniform Law Commission, which regulates agreements between an employer and a worker or employee that prohibit or limit the worker or employee from working after the work relationship with the employer

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

ends.

The bill:

- Regulates all restrictive post-employment agreements, including noncompete agreements, confidentiality agreements, no-business agreements, nonsolicitation agreements, no-recruit agreements, payment-for-competition agreements, and training reimbursements agreements;
- Prohibits noncompete agreements and all other restrictive agreements, except confidentiality agreements and training-reimbursement agreements, for low-wage workers, defined as those making less than the state's annual mean wage;
- Requires advance notice and other procedural requirements for an enforceable noncompete agreement or other restrictive agreement; and
- Creates penalties and enforcement by the state as well as private rights of action.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article
3 2 of title 8 as follows:

4 PART 3

5 UNIFORM RESTRICTIVE

6 EMPLOYMENT AGREEMENT ACT

7 **8-2-301. Short title.** THIS PART 3 IS THE "UNIFORM RESTRICTIVE
8 EMPLOYMENT AGREEMENT ACT".

9 **8-2-302. Definitions.** AS USED IN THIS PART 3:

10 (1) "CONFIDENTIALITY AGREEMENT" MEANS A RESTRICTIVE
11 EMPLOYMENT AGREEMENT THAT:

12 (a) PROHIBITS A WORKER FROM USING OR DISCLOSING
13 INFORMATION; AND

14 (b) IS NOT A CONDITION OF SETTLEMENT OR OTHER RESOLUTION OF
15 A DISPUTE.

1 (2) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
2 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
3 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

4 (3) "EMPLOYER" MEANS A PERSON THAT HIRES OR CONTRACTS
5 WITH A WORKER TO WORK FOR THE PERSON.

6 (4) "NO-BUSINESS AGREEMENT" MEANS A RESTRICTIVE
7 EMPLOYMENT AGREEMENT THAT PROHIBITS A WORKER FROM WORKING
8 FOR A CLIENT OR CUSTOMER OF THE EMPLOYER.

9 (5) "NONCOMPETE AGREEMENT" MEANS A RESTRICTIVE
10 EMPLOYMENT AGREEMENT THAT PROHIBITS A WORKER FROM WORKING
11 OTHER THAN FOR THE EMPLOYER. THE TERM DOES NOT INCLUDE A
12 NO-BUSINESS AGREEMENT.

13 (6) "NONSOLICITATION AGREEMENT" MEANS A RESTRICTIVE
14 EMPLOYMENT AGREEMENT THAT PROHIBITS A WORKER FROM SOLICITING
15 A CLIENT OR CUSTOMER OF THE EMPLOYER.

16 (7) "NO-RECRUIT AGREEMENT" MEANS A RESTRICTIVE
17 EMPLOYMENT AGREEMENT THAT PROHIBITS A WORKER FROM HIRING OR
18 RECRUITING ANOTHER WORKER OF THE EMPLOYER.

19 (8) "PAYMENT-FOR-COMPETITION AGREEMENT" MEANS A
20 RESTRICTIVE EMPLOYMENT AGREEMENT THAT IMPOSES AN ADVERSE
21 FINANCIAL CONSEQUENCE ON A WORKER FOR WORKING OTHER THAN FOR
22 THE EMPLOYER BUT DOES NOT EXPRESSLY PROHIBIT THE WORK.

23 (9) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
24 NONPROFIT ENTITY, OR OTHER LEGAL ENTITY. THE TERM DOES NOT
25 INCLUDE A PUBLIC CORPORATION OR GOVERNMENT OR GOVERNMENTAL
26 SUBDIVISION, AGENCY, OR INSTRUMENTALITY.

27 (10) "RECORD" MEANS INFORMATION:

- 1 (a) INSCRIBED ON A TANGIBLE MEDIUM; OR
- 2 (b) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND
- 3 RETRIEVABLE IN PERCEIVABLE FORM.

4 (11) "RESTRICTIVE EMPLOYMENT AGREEMENT" MEANS AN
5 AGREEMENT OR PART OF ANOTHER AGREEMENT BETWEEN AN EMPLOYER
6 AND WORKER THAT PROHIBITS, LIMITS, OR SETS A CONDITION ON WORKING
7 OTHER THAN FOR THE EMPLOYER AFTER THE WORK RELATIONSHIP ENDS OR
8 A SALE OF A BUSINESS IS CONSUMMATED. THE TERM INCLUDES A
9 CONFIDENTIALITY AGREEMENT, NO-BUSINESS AGREEMENT, NONCOMPETE
10 AGREEMENT, NONSOLICITATION AGREEMENT, NO-RECRUIT AGREEMENT,
11 PAYMENT-FOR-COMPETITION AGREEMENT, AND TRAINING-REPAYMENT
12 AGREEMENT.

13 (12) "SALE OF A BUSINESS" MEANS A SALE, MERGER,
14 CONSOLIDATION, AMALGAMATION, REORGANIZATION, OR OTHER
15 TRANSACTION, HOWEVER DENOMINATED, OF:

16 (a) ALL OR PART OF A BUSINESS OR NONPROFIT ENTITY OR
17 ASSOCIATION, OR ALL OR PART OF ITS ASSETS; OR

18 (b) A SUBSTANTIAL OWNERSHIP INTEREST IN THE ENTITY OR
19 ASSOCIATION.

20 (13) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
21 ADOPT A RECORD, TO:

22 (a) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

23 (b) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN
24 ELECTRONIC SYMBOL, SOUND, OR PROCESS.

25 (14) "SIGNED AGREEMENT" MEANS A RESTRICTIVE EMPLOYMENT
26 AGREEMENT SIGNED BY THE WORKER AND EMPLOYER.

27 (15) "SPECIAL TRAINING" MEANS INSTRUCTION OR OTHER

1 EDUCATION A WORKER RECEIVES FROM A SOURCE OTHER THAN THE
2 EMPLOYER THAT:

3 (a) IS DESIGNED TO ENHANCE THE ABILITY OF THE WORKER TO
4 PERFORM THE WORKER'S WORK;

5 (b) IS NOT NORMALLY RECEIVED BY OTHER WORKERS; AND

6 (c) REQUIRES A SIGNIFICANT AND IDENTIFIABLE EXPENDITURE BY
7 THE EMPLOYER DISTINCT FROM ORDINARY ON-THE-JOB TRAINING.

8 (16) "STATED RATE OF PAY" MEANS THE COMPENSATION,
9 CALCULATED ON AN ANNUALIZED BASIS, AN EMPLOYER AGREES TO PAY A
10 WORKER. THE TERM:

11 (a) INCLUDES A WAGE, SALARY, PROFESSIONAL FEE, OTHER
12 COMPENSATION FOR PERSONAL SERVICE, AND THE FAIR MARKET VALUE OF
13 ALL REMUNERATION OTHER THAN CASH; AND

14 (b) DOES NOT INCLUDE:

15 (I) A HEALTH-CARE BENEFIT, SEVERANCE PAY, RETIREMENT
16 BENEFIT, OR EXPENSE REIMBURSEMENT;

17 (II) DISTRIBUTION OF EARNINGS AND PROFIT THAT IS NOT
18 COMPENSATION FOR PERSONAL SERVICE; OR

19 (III) ANTICIPATED BUT INDETERMINABLE COMPENSATION,
20 INCLUDING A TIP, BONUS, OR COMMISSION.

21 (17) "TRADE SECRET" HAS THE SAME MEANING AS SET FORTH IN
22 SECTION 7-74-102 (4).

23 (18) "TRAINING-REPAYMENT AGREEMENT" MEANS A RESTRICTIVE
24 EMPLOYMENT AGREEMENT THAT REQUIRES A WORKER TO REPAY THE
25 EMPLOYER FOR TRAINING COSTS INCURRED BY THE EMPLOYER.

26 (19) "WORK" MEANS PROVIDING SERVICE.

27 (20) "WORKER" MEANS AN INDIVIDUAL WHO WORKS FOR AN

1 EMPLOYER. THE TERM:

2 (a) INCLUDES AN EMPLOYEE, INDEPENDENT CONTRACTOR, EXTERN,
3 INTERN, VOLUNTEER, APPRENTICE, SOLE PROPRIETOR WHO PROVIDES
4 SERVICE TO A CLIENT OR CUSTOMER, AND AN INDIVIDUAL WHO PROVIDES
5 SERVICE THROUGH A BUSINESS OR NONPROFIT ENTITY OR ASSOCIATION;

6 (b) DOES NOT INCLUDE AN INDIVIDUAL, EVEN IF THE INDIVIDUAL
7 PERFORMS INCIDENTAL SERVICE FOR THE EMPLOYER, WHOSE SOLE
8 RELATIONSHIP WITH THE EMPLOYER IS AS:

9 (I) A MEMBER OF A BOARD OF DIRECTORS OR OTHER GOVERNING
10 OR ADVISORY BOARD;

11 (II) AN INDIVIDUAL UNDER WHOSE AUTHORITY THE POWERS OF A
12 BUSINESS OR NONPROFIT ENTITY OR ASSOCIATION ARE EXERCISED;

13 (III) AN INVESTOR; OR

14 (IV) A VENDOR OF GOODS.

15 **8-2-303. Scope.** (1) THIS PART 3 APPLIES TO A RESTRICTIVE
16 EMPLOYMENT AGREEMENT. IF A RESTRICTIVE EMPLOYMENT AGREEMENT
17 IS PART OF ANOTHER AGREEMENT, THIS PART 3 DOES NOT AFFECT OTHER
18 PARTS OF THE OTHER AGREEMENT.

19 (2) THIS PART 3 SUPERSEDES COMMON LAW ONLY TO THE EXTENT
20 THAT IT APPLIES TO A RESTRICTIVE EMPLOYMENT AGREEMENT BUT
21 OTHERWISE DOES NOT AFFECT PRINCIPLES OF LAW AND EQUITY
22 CONSISTENT WITH THIS PART 3.

23 (3) THIS PART 3 DOES NOT AFFECT AN AGREEMENT TO TAKE AN
24 ACTION SOLELY TO TRANSFER, PERFECT, OR ENFORCE A PATENT,
25 COPYRIGHT, TRADE SECRET, OR SIMILAR RIGHT.

26 (4) THIS PART 3 DOES NOT AFFECT A NONCOMPETITION
27 OBLIGATION ARISING SOLELY AS A RESULT OF AN EXISTING OWNERSHIP

1 INTEREST IN A BUSINESS ENTITY.

2 (5) THIS PART 3 DOES NOT AFFECT AN AGREEMENT THAT REQUIRES
3 A WORKER TO FORFEIT COMPENSATION AFTER THE WORK RELATIONSHIP
4 ENDS, INCLUDING VACATION OR RETIREMENT BENEFITS, THE RIGHT TO
5 WHICH ACCRUED BEFORE THE WORK RELATIONSHIP ENDS.

6 **8-2-304. Notice requirements.** (1) EXCEPT AS PROVIDED IN
7 SUBSECTION (5) OF THIS SECTION, A RESTRICTIVE EMPLOYMENT
8 AGREEMENT IS PROHIBITED AND UNENFORCEABLE UNLESS:

9 (a) THE EMPLOYER PROVIDES A COPY OF THE PROPOSED
10 AGREEMENT IN A RECORD TO:

11 (I) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A PROSPECTIVE
12 WORKER, AT LEAST FOURTEEN DAYS BEFORE THE PROSPECTIVE WORKER
13 ACCEPTS WORK OR COMMENCES WORK, WHICHEVER IS EARLIER;

14 (II) A CURRENT WORKER WHO RECEIVES A MATERIAL INCREASE IN
15 COMPENSATION, AT LEAST FOURTEEN DAYS BEFORE THE INCREASE OR THE
16 WORKER ACCEPTS A CHANGE IN JOB STATUS OR RESPONSIBILITIES,
17 WHICHEVER IS EARLIER; OR

18 (III) A DEPARTING WORKER WHO IS GIVEN CONSIDERATION IN
19 ADDITION TO ANYTHING OF VALUE TO WHICH THE WORKER ALREADY IS
20 ENTITLED, AT LEAST FOURTEEN DAYS BEFORE THE AGREEMENT IS
21 REQUIRED TO BE SIGNED;

22 (b) WITH THE COPY OF THE PROPOSED AGREEMENT PROVIDED
23 UNDER SUBSECTION (1)(a) OF THIS SECTION, THE EMPLOYER PROVIDES THE
24 WORKER IN A RECORD THE SEPARATE NOTICE, IN THE PREFERRED
25 LANGUAGE OF THE WORKER IF AVAILABLE, PRESCRIBED BY THE
26 DEPARTMENT OF LABOR AND EMPLOYMENT UNDER SUBSECTION (4) OF
27 THIS SECTION;

1 (c) THE PROPOSED AGREEMENT AND THE SIGNED AGREEMENT
2 CLEARLY SPECIFY THE INFORMATION, TYPE OF WORK ACTIVITY, OR EXTENT
3 OF COMPETITION THAT THE AGREEMENT PROHIBITS, LIMITS, OR SETS
4 CONDITIONS ON AFTER THE WORK RELATIONSHIP ENDS;

5 (d) THE AGREEMENT IS IN A RECORD SEPARATELY SIGNED BY THE
6 WORKER AND EMPLOYER AND THE EMPLOYER PROMPTLY PROVIDES THE
7 WORKER A COPY OF THE SIGNED AGREEMENT; AND

8 (e) SUBJECT TO SUBSECTION (3) OF THIS SECTION, THE EMPLOYER
9 PROVIDES AN ADDITIONAL COPY OF THE AGREEMENT TO THE WORKER, NOT
10 LATER THAN FOURTEEN DAYS AFTER THE WORKER, IN A RECORD,
11 REQUESTS A COPY, UNLESS THE EMPLOYER REASONABLY AND IN GOOD
12 FAITH IS UNABLE TO PROVIDE THE COPY NOT LATER THAN FOURTEEN DAYS
13 AFTER THE REQUEST AND THE WORKER IS NOT PREJUDICED BY THE DELAY.

14 (2) A WORKER MAY WAIVE THE FOURTEEN-DAY REQUIREMENT OF
15 SUBSECTION (1)(a)(I) OF THIS SECTION IF THE WORKER RECEIVES THE
16 SIGNED AGREEMENT BEFORE BEGINNING WORK. IF THE WORKER WAIVES
17 THE REQUIREMENT, THE WORKER MAY RESCIND THE ENTIRE EMPLOYMENT
18 AGREEMENT NOT LATER THAN FOURTEEN DAYS AFTER THE WORKER
19 RECEIVES THE AGREEMENT.

20 (3) AN EMPLOYER IS NOT REQUIRED UNDER SUBSECTION (1)(e) OF
21 THIS SECTION TO PROVIDE AN ADDITIONAL COPY OF THE AGREEMENT MORE
22 THAN ONCE DURING A CALENDAR YEAR.

23 (4) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
24 PRESCRIBE THE NOTICE AN EMPLOYER MUST PROVIDE UNDER SUBSECTION
25 (1)(b) OF THIS SECTION. THE NOTICE MUST INFORM THE WORKER, IN
26 LANGUAGE AN AVERAGE READER CAN UNDERSTAND, OF THE
27 REQUIREMENTS OF THIS PART 3, INCLUDING THE REQUIREMENTS OF

1 SUBSECTION (1) OF THIS SECTION AND SECTIONS 8-2-305 TO 8-2-314 AND
2 STATE THAT THIS PART 3 ESTABLISHES PENALTIES AGAINST AN EMPLOYER
3 THAT ENTERS INTO A PROHIBITED AGREEMENT. THE DEPARTMENT OF
4 LABOR AND EMPLOYMENT SHALL MAKE THE NOTICE AVAILABLE TO
5 EMPLOYERS ON ITS PUBLICLY ACCESSIBLE WEBSITE OR IN OTHER
6 APPROPRIATE WAYS. THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY:

7 (a) PRODUCE A SEPARATE NOTICE FOR EACH TYPE OF RESTRICTIVE
8 EMPLOYMENT AGREEMENT; AND

9 (b) TRANSLATE THE NOTICE INTO LANGUAGES OTHER THAN
10 ENGLISH USED BY A SUBSTANTIAL PORTION OF THE STATE'S LABOR FORCE.

11 (5) THIS SECTION DOES NOT APPLY TO A RESTRICTIVE
12 EMPLOYMENT AGREEMENT IN CONNECTION WITH THE SALE OF A BUSINESS
13 OF WHICH THE WORKER IS A SUBSTANTIAL OWNER AND CONSENTS TO THE
14 SALE.

15 **8-2-305. Low-wage worker.** (1) A RESTRICTIVE EMPLOYMENT
16 AGREEMENT, OTHER THAN A CONFIDENTIALITY AGREEMENT OR
17 TRAINING-REPAYMENT AGREEMENT, IS:

18 (a) PROHIBITED AND UNENFORCEABLE IF, WHEN THE WORKER
19 SIGNS THE AGREEMENT, THE WORKER HAS A STATED RATE OF PAY LESS
20 THAN THE ANNUAL COMPENSATION THRESHOLD FOR HIGHLY
21 COMPENSATED WORKERS AS DETERMINED BY THE DIVISION OF LABOR
22 STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND
23 EMPLOYMENT FOR PURPOSES OF MINIMUM WAGE AND OVERTIME
24 EXEMPTIONS; AND

25 (b) UNENFORCEABLE IF, AT ANY TIME DURING THE WORK
26 RELATIONSHIP, THE WORKER'S COMPENSATION FROM THE EMPLOYER,
27 CALCULATED ON AN ANNUALIZED BASIS, IS LESS THAN THE COMPENSATION

1 THRESHOLD FOR HIGHLY COMPENSATED WORKERS AS DETERMINED BY THE
2 DIVISION OF LABOR STANDARDS AND STATISTICS IN THE DEPARTMENT OF
3 LABOR AND EMPLOYMENT FOR PURPOSES OF MINIMUM WAGE AND
4 OVERTIME EXEMPTIONS.

5 **8-2-306. Effect of termination of work.** (1) A RESTRICTIVE
6 EMPLOYMENT AGREEMENT, OTHER THAN A CONFIDENTIALITY AGREEMENT
7 OR TRAINING-REPAYMENT AGREEMENT, IS UNENFORCEABLE IF:

8 (a) THE WORKER RESIGNS FOR GOOD CAUSE ATTRIBUTABLE TO THE
9 EMPLOYER; OR

10 (b) THE EMPLOYER TERMINATES THE WORKER FOR A REASON
11 OTHER THAN GROSS MISCONDUCT OR THE COMPLETION OF THE AGREED
12 WORK OR THE TERM OF THE CONTRACT.

13 **8-2-307. Reasonableness requirement.** A RESTRICTIVE
14 EMPLOYMENT AGREEMENT IS PROHIBITED AND UNENFORCEABLE UNLESS
15 IT IS REASONABLE.

16 **8-2-308. Noncompete agreement.** (1) A NONCOMPETE
17 AGREEMENT IS PROHIBITED AND UNENFORCEABLE UNLESS:

18 (a) THE AGREEMENT PROTECTS ANY OF THE FOLLOWING
19 LEGITIMATE BUSINESS INTERESTS:

20 (I) THE SALE OF A BUSINESS OF WHICH THE WORKER IS A
21 SUBSTANTIAL OWNER AND CONSENTS TO THE SALE;

22 (II) THE CREATION OF A BUSINESS IN WHICH THE WORKER IS A
23 SUBSTANTIAL OWNER;

24 (III) A TRADE SECRET; OR

25 (IV) AN ONGOING CLIENT OR CUSTOMER RELATIONSHIP OF THE
26 EMPLOYER;

27 (b) WHEN THE WORKER SIGNS THE AGREEMENT AND THROUGH THE

1 TIME OF ENFORCEMENT, THE AGREEMENT IS NARROWLY TAILORED IN
2 DURATION, GEOGRAPHICAL AREA, AND SCOPE OF ACTUAL COMPETITION TO
3 PROTECT AN INTEREST UNDER SUBSECTION (1)(a) OF THIS SECTION, AND
4 THE INTEREST CANNOT BE PROTECTED ADEQUATELY BY ANOTHER
5 RESTRICTIVE EMPLOYMENT AGREEMENT; AND

6 (c) THE PROHIBITION ON COMPETITION LASTS NOT LONGER THAN:

7 (I) FIVE YEARS AFTER THE WORK RELATIONSHIP ENDS WHEN
8 PROTECTING AN INTEREST UNDER SUBSECTION (1)(a)(I) OR (1)(a)(II) OF
9 THIS SECTION; OR

10 (II) ONE YEAR AFTER THE WORK RELATIONSHIP ENDS WHEN
11 PROTECTING AN INTEREST UNDER SUBSECTION (1)(a)(III) OR (1)(a)(IV) OF
12 THIS SECTION BUT NOT AN INTEREST UNDER SUBSECTION (1)(a)(I) OR
13 (1)(a)(II) OF THIS SECTION.

14 **8-2-309. Confidentiality agreement.** (1) A CONFIDENTIALITY
15 AGREEMENT IS PROHIBITED AND UNENFORCEABLE UNLESS THE WORKER
16 MAY USE AND DISCLOSE INFORMATION THAT:

17 (a) ARISES FROM THE WORKER'S GENERAL TRAINING, KNOWLEDGE,
18 SKILL, OR EXPERIENCE, WHETHER GAINED ON THE JOB OR OTHERWISE;

19 (b) IS READILY ASCERTAINABLE TO THE RELEVANT PUBLIC; OR

20 (c) IS IRRELEVANT TO THE EMPLOYER'S BUSINESS.

21 **8-2-310. No-business agreement.** (1) A NO-BUSINESS
22 AGREEMENT IS PROHIBITED AND UNENFORCEABLE UNLESS THE
23 AGREEMENT:

24 (a) APPLIES ONLY TO A PROSPECTIVE OR ONGOING CLIENT OR
25 CUSTOMER OF THE EMPLOYER WITH WHICH THE WORKER HAD WORKED
26 PERSONALLY; AND

27 (b) LASTS NOT LONGER THAN SIX MONTHS AFTER THE WORK

1 RELATIONSHIP BETWEEN THE EMPLOYER AND WORKER ENDS.

2 **8-2-311. Nonsolicitation agreement.** (1) A NONSOLICITATION
3 AGREEMENT IS PROHIBITED AND UNENFORCEABLE UNLESS THE
4 AGREEMENT:

5 (a) APPLIES ONLY TO A PROSPECTIVE OR ONGOING CLIENT OR
6 CUSTOMER OF THE EMPLOYER WITH WHICH THE WORKER HAD WORKED
7 PERSONALLY; AND

8 (b) LASTS NOT LONGER THAN ONE YEAR AFTER THE WORK
9 RELATIONSHIP BETWEEN THE EMPLOYER AND WORKER ENDS.

10 **8-2-312. No-recruit agreement.** (1) A NO-RECRUIT AGREEMENT
11 IS PROHIBITED AND UNENFORCEABLE UNLESS THE AGREEMENT:

12 (a) PROHIBITS HIRING OR RECRUITING ONLY ANOTHER WORKER
13 CURRENTLY WORKING FOR THE EMPLOYER WITH WHOM THE WORKER HAD
14 WORKED PERSONALLY; AND

15 (b) LASTS NOT LONGER THAN SIX MONTHS AFTER THE WORK
16 RELATIONSHIP BETWEEN THE EMPLOYER AND WORKER ENDS.

17 **8-2-313. Payment-for-competition agreement.** (1) A
18 PAYMENT-FOR-COMPETITION AGREEMENT IS PROHIBITED AND
19 UNENFORCEABLE UNLESS THE AGREEMENT:

20 (a) IMPOSES A FINANCIAL CONSEQUENCE THAT IS NOT GREATER
21 THAN THE ACTUAL COMPETITIVE HARM TO THE EMPLOYER; AND

22 (b) LASTS NOT LONGER THAN ONE YEAR AFTER THE WORK
23 RELATIONSHIP BETWEEN THE EMPLOYER AND WORKER ENDS.

24 **8-2-314. Training-repayment agreement.** (1) A
25 TRAINING-REPAYMENT AGREEMENT IS PROHIBITED AND UNENFORCEABLE
26 UNLESS THE AGREEMENT:

27 (a) REQUIRES REPAYMENT ONLY OF THE COST OF SPECIAL

1 TRAINING;

2 (b) LASTS NOT LONGER THAN TWO YEARS AFTER THE SPECIAL
3 TRAINING IS COMPLETED; AND

4 (c) PRORATES THE REPAYMENT FOR WORK DONE DURING THE
5 POST-TRAINING PERIOD.

6 **8-2-315. Nonwaivability.** EXCEPT AS PROVIDED IN SECTION
7 8-2-304(2) OR IN THE CONTEXT OF RESOLVING AN ISSUE IN LITIGATION OR
8 OTHER DISPUTE RESOLUTION, A PARTY TO A RESTRICTIVE EMPLOYMENT
9 AGREEMENT MAY NOT WAIVE A REQUIREMENT OF THIS PART 3 OR
10 STIPULATE TO A FACT TO AVOID A REQUIREMENT OF THIS PART 3.

11 **8-2-316. Enforcement and remedy.** (1) THE COURT MAY NOT
12 MODIFY A RESTRICTIVE EMPLOYMENT AGREEMENT THAT RESTRICTS A
13 WORKER BEYOND A PERIOD IMPOSED UNDER THIS PART 3 TO MAKE THE
14 AGREEMENT ENFORCEABLE. THE COURT MAY MODIFY AN AGREEMENT
15 THAT OTHERWISE VIOLATES THIS PART 3 ONLY ON A FINDING THAT THE
16 EMPLOYER REASONABLY AND IN GOOD FAITH BELIEVED THE AGREEMENT
17 WAS ENFORCEABLE UNDER THIS PART 3 AND ONLY TO THE EXTENT
18 NECESSARY TO PROTECT THE EMPLOYER'S INTEREST AND RENDER THE
19 AGREEMENT ENFORCEABLE.

20 (2) A WORKER WHO IS A PARTY TO A RESTRICTIVE EMPLOYMENT
21 AGREEMENT OR A SUBSEQUENT EMPLOYER THAT HAS HIRED OR IS
22 CONSIDERING HIRING THE WORKER MAY SEEK A DECLARATORY JUDGMENT
23 THAT THE AGREEMENT IS UNENFORCEABLE.

24 (3) IN ADDITION TO OTHER JUDICIAL REMEDIES, A COURT MAY
25 AWARD STATUTORY DAMAGES UNDER SUBSECTION (5) OF THIS SECTION
26 AND, IN A PRIVATE ACTION, REASONABLE ATTORNEY FEES TO A PARTY
27 THAT SUCCESSFULLY CHALLENGES OR DEFENDS AGAINST THE

1 ENFORCEABILITY OF A RESTRICTIVE EMPLOYMENT AGREEMENT OR PROVES
2 A VIOLATION OF THIS PART 3.

3 (4) AN EMPLOYER SEEKING TO ENFORCE A RESTRICTIVE
4 EMPLOYMENT AGREEMENT HAS THE BURDEN OF PROVING COMPLIANCE
5 WITH THIS PART 3.

6 (5) AN EMPLOYER THAT ENTERS A RESTRICTIVE EMPLOYMENT
7 AGREEMENT THAT THE EMPLOYER KNOWS OR REASONABLY SHOULD KNOW
8 IS PROHIBITED BY THIS PART 3 COMMITS A CIVIL VIOLATION. THE
9 DEPARTMENT OF LABOR AND EMPLOYMENT OR THE ATTORNEY GENERAL
10 MAY BRING AN ACTION ON BEHALF OF THE WORKER, OR THE WORKER MAY
11 BRING A PRIVATE ACTION, AGAINST THE EMPLOYER TO ENFORCE THIS
12 SUBSECTION (5). THE COURT MAY AWARD STATUTORY DAMAGES OF NOT
13 MORE THAN FIVE THOUSAND DOLLARS PER WORKER PER AGREEMENT FOR
14 EACH VIOLATION OF THIS SUBSECTION (5).

15 **8-2-317. Choice of law and venue.** (1) A CHOICE OF LAW
16 PROVISION THAT APPLIES TO A RESTRICTIVE EMPLOYMENT AGREEMENT IS
17 PROHIBITED AND UNENFORCEABLE UNLESS IT REQUIRES THAT A DISPUTE
18 ARISING UNDER THE AGREEMENT BE GOVERNED BY THE LAW OF THE
19 JURISDICTION WHERE THE WORKER PRIMARILY WORKS FOR THE EMPLOYER
20 OR, IF THE WORK RELATIONSHIP HAS ENDED, THE JURISDICTION WHERE THE
21 WORKER PRIMARILY WORKED WHEN THE RELATIONSHIP ENDED.

22 (2) A CHOICE OF VENUE PROVISION THAT APPLIES TO A
23 RESTRICTIVE EMPLOYMENT AGREEMENT IS PROHIBITED AND
24 UNENFORCEABLE UNLESS IT REQUIRES THAT A DISPUTE ARISING UNDER
25 THE AGREEMENT BE DECIDED IN A JURISDICTION WHERE:

26 (a) THE WORKER PRIMARILY WORKS OR, IF THE WORK
27 RELATIONSHIP HAS ENDED, A JURISDICTION WHERE THE WORKER

1 PRIMARILY WORKED WHEN THE RELATIONSHIP ENDED; OR

2 (b) THE WORKER RESIDES AT THE TIME OF THE DISPUTE.

3 **8-2-318. Uniformity of application and construction.** IN
4 APPLYING AND CONSTRUING THIS PART 3, A COURT SHALL CONSIDER THE
5 PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT
6 ENACT IT.

7 **8-2-319. Saving provision.** EXCEPT AS PROVIDED IN SECTION
8 8-2-320, THIS PART 3 DOES NOT AFFECT THE VALIDITY OF A RESTRICTIVE
9 EMPLOYMENT AGREEMENT IN EFFECT BEFORE THE EFFECTIVE DATE OF THIS
10 PART 3.

11 **8-2-320. Transitional provision.** SECTIONS 8-2-304 (1)(e) AND
12 8-2-305 APPLY TO A RESTRICTIVE EMPLOYMENT AGREEMENT ENTERED
13 INTO BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 3.

14 **SECTION 2.** In Colorado Revised Statutes, 8-2-113, **repeal** (2)
15 and (3) as follows:

16 **8-2-113. Unlawful to intimidate worker - agreement not to**
17 **compete.** (2) ~~Any covenant not to compete which restricts the right of~~
18 ~~any person to receive compensation for performance of skilled or~~
19 ~~unskilled labor for any employer shall be void, but this subsection (2)~~
20 ~~shall not apply to:~~

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

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

24 ~~(c) Any contractual provision providing for recovery of the~~
25 ~~expense of educating and training an employee who has served an~~
26 ~~employer for a period of less than two years;~~

27 ~~(d) Executive and management personnel and officers and~~

1 employees who constitute professional staff to executive and management
2 personnel.

3 (3) (a) ~~Any covenant not to compete provision of an employment,~~
4 ~~partnership, or corporate agreement between physicians that restricts the~~
5 ~~right of a physician to practice medicine, as defined in section~~
6 ~~12-240-107, upon termination of the agreement, is void; except that all~~
7 ~~other provisions of the agreement enforceable at law, including~~
8 ~~provisions that require the payment of damages in an amount that is~~
9 ~~reasonably related to the injury suffered by reason of termination of the~~
10 ~~agreement, are enforceable. Provisions of a covenant not to compete that~~
11 ~~require the payment of damages upon termination of the agreement may~~
12 ~~include damages related to competition.~~

13 (b) ~~Notwithstanding subsection (3)(a) of this section, after~~
14 ~~termination of an agreement described in subsection (3)(a) of this section,~~
15 ~~a physician may disclose his or her continuing practice of medicine and~~
16 ~~new professional contact information to any patient with a rare disorder,~~
17 ~~as defined in accordance with criteria developed by the National~~
18 ~~Organization for Rare Disorders, Inc., or a successor organization, to~~
19 ~~whom the physician was providing consultation or treatment before~~
20 ~~termination of the agreement. Neither the physician nor the physician's~~
21 ~~employer, if any, is liable to any party to the prior agreement for damages~~
22 ~~alleged to have resulted from the disclosure or from the physician's~~
23 ~~treatment of the patient after termination of the prior agreement.~~

24 **SECTION 3. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2022 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

7 (2) This act applies to agreements entered into or renewed on or
8 after the applicable effective date of this act.