

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 22-0956.01 Yelana Love x2295

HOUSE BILL 22-1317

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A BILL FOR AN ACT

101 **CONCERNING RESTRICTIVE EMPLOYMENT AGREEMENTS.**

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>.)

The bill declares that a restrictive employment agreement or covenant not to compete that restricts the right of any person to receive compensation for performance of labor for any employer is void, with certain exceptions.

Additionally, if the employer provides proper notice of the restrictive employment agreement or covenant not to compete to the employee or prospective employee, the following agreements or covenants are not prohibited:

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.*

SENATE
3rd Reading Unamended
May 3, 2022

SENATE
Amended 2nd Reading
May 2, 2022

HOUSE
3rd Reading Unamended
April 18, 2022

HOUSE
Amended 2nd Reading
April 14, 2022

- A provision providing for recovery of the expense of educating and training an employee who has served an employer for a period of less than 2 years, unless the education and training was primarily for the benefit or convenience of the employer;
- A reasonable confidentiality provision relevant to the employer's business that does not prohibit disclosure of information that arises from the employee's general training, knowledge, skill, or experience, whether gained on the job or otherwise, or information that is readily ascertainable to the public; and
- Agreements or covenants with a person earning annual cash compensation greater than the threshold amount for highly compensated employees.

The bill limits choice of law and choice of venue provisions in restrictive employment agreements and covenants not to compete.

The bill prohibits an employer from entering into, presenting to an employee or prospective employee as a term of employment, or attempting to enforce any restrictive employment agreement or covenant not to compete that is void under the bill. An employer who violates this provision is subject to a penalty of \$5,000 for each employee or prospective employee, injunctive relief, and actual damages.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 8-2-113 as
3 follows:

4 **8-2-113. Unlawful to intimidate worker - agreement not to**
5 **compete - prohibition - exceptions - notice - definition.** (1) **Legislative**
6 **intent.** THE GENERAL ASSEMBLY INTENDS TO PRESERVE EXISTING STATE
7 AND FEDERAL CASE LAW IN EFFECT BEFORE THE EFFECTIVE DATE OF THIS
8 ACT THAT:

9 (a) DEFINES WHAT COUNTS AS A COVENANT NOT TO COMPETE
10 THAT IS PROHIBITED BY THIS SECTION; AND

11 (b) SPECIFIES THE EXTENT TO WHICH A COVENANT NOT TO
12 COMPETE FOR THE PROTECTION OF TRADE SECRETS MUST BE TAILORED IN
13 SCOPE IN ORDER TO BE ENFORCEABLE UNDER THIS SECTION.

1 ~~(1)~~ (1.5) (a) It ~~shall be~~ IS unlawful to use force, threats, or other
2 means of intimidation to prevent any person from engaging in any lawful
3 occupation at any place ~~he~~ THE PERSON sees fit.

4 (b) A PERSON WHO VIOLATES THIS SUBSECTION (1.5) COMMITS A
5 CLASS 2 MISDEMEANOR, AS DEFINED IN SECTION 18-1.3-501.

6 (2) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(b) AND (3) OF
7 THIS SECTION, any covenant not to compete ~~which~~ THAT restricts the
8 right of any person to receive compensation for performance of ~~skilled or~~
9 ~~unskilled~~ labor for any employer ~~shall be~~ IS void. ~~but this subsection (2)~~
10 ~~shall not apply to:~~

11 (b) THIS SUBSECTION (2) DOES NOT APPLY TO A COVENANT NOT TO
12 COMPETE GOVERNING A PERSON WHO, AT THE TIME THE COVENANT NOT TO
13 COMPETE IS ENTERED INTO AND AT THE TIME IT IS ENFORCED, EARNS AN
14 AMOUNT OF ANNUALIZED CASH COMPENSATION EQUIVALENT TO OR
15 GREATER THAN THE THRESHOLD AMOUNT FOR HIGHLY COMPENSATED
16 WORKERS, IF THE COVENANT NOT TO COMPETE IS FOR THE PROTECTION OF
17 TRADE SECRETS AND IS NO BROADER THAN IS REASONABLY NECESSARY TO
18 PROTECT THE EMPLOYER'S LEGITIMATE INTEREST IN PROTECTING TRADE
19 SECRETS.

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

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

23 (c) AS USED IN THIS SUBSECTION (2):

24 (I) "ANNUALIZED CASH COMPENSATION" MEANS:

25 (A) THE AMOUNT OF THE GROSS SALARY OR WAGE AMOUNT, THE
26 FEE AMOUNT, OR THE OTHER COMPENSATION AMOUNT FOR THE FULL YEAR,
27 IF THE PERSON WAS EMPLOYED OR ENGAGED FOR A FULL YEAR.

1 (B) THE COMPENSATION THAT THE PERSON WOULD HAVE EARNED,
2 BASED ON THE WORKER'S GROSS SALARY OR WAGE AMOUNT, FEE, OR
3 OTHER COMPENSATION IF THE WORKER WAS NOT EMPLOYED OR ENGAGED
4 FOR A FULL YEAR.

5 (II) "THRESHOLD AMOUNT" FOR HIGHLY COMPENSATED WORKERS"
6 MEANS THE GREATER OF THE THRESHOLD AMOUNT FOR HIGHLY
7 COMPENSATED WORKERS AS DETERMINED BY THE DIVISION OF LABOR
8 STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND
9 EMPLOYMENT:

10 (A) AS OF THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED; OR

11 (B) AT THE TIME THE COVENANT NOT TO COMPETE IS EXECUTED
12 BY THE PARTIES.

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

16 ~~(d) Executive and management personnel and officers and~~
17 ~~employees who constitute professional staff to executive and management~~
18 ~~personnel.~~

19 (III) IN DETERMINING WHETHER A WORKER'S CASH COMPENSATION
20 EXCEEDS THE THRESHOLD AMOUNT, WHERE THE WORKER HAS BEEN
21 EMPLOYED FOR LESS THAN A CALENDAR YEAR, THE WORKER'S CASH
22 COMPENSATION EXCEEDS THE THRESHOLD AMOUNT IF THE WORKER
23 WOULD REASONABLY EXPECT TO EARN MORE THAN THE THRESHOLD
24 AMOUNT DURING A CALENDAR YEAR OF EMPLOYMENT.

25 (d) THIS SUBSECTION (2) DOES NOT APPLY TO A COVENANT NOT TO
26 SOLICIT CUSTOMERS GOVERNING A PERSON WHO, AT THE TIME THE
27 COVENANT IS ENTERED INTO AND AT THE TIME IT IS ENFORCED, EARNS AN

1 AMOUNT OF ANNUALIZED CASH COMPENSATION EQUIVALENT TO OR
2 GREATER THAN SIXTY PERCENT OF THE THRESHOLD AMOUNT FOR HIGHLY
3 COMPENSATED WORKERS IF THE NONSOLICITATION COVENANT IS NO
4 BROADER THAN REASONABLY NECESSARY TO PROTECT THE EMPLOYER'S
5 LEGITIMATE INTEREST IN PROTECTING TRADE SECRETS.

6 (3) THE FOLLOWING █ COVENANTS ARE NOT PROHIBITED BY
7 SUBSECTION (2) OF THIS SECTION:

8 (a) A PROVISION PROVIDING FOR AN EMPLOYER'S RECOVERY OF
9 THE EXPENSE OF EDUCATING AND TRAINING A WORKER WHERE THE
10 TRAINING IS DISTINCT FROM NORMAL, ON-THE-JOB TRAINING, THE
11 EMPLOYER'S RECOVERY IS LIMITED TO THE REASONABLE COSTS OF THE
12 TRAINING AND DECREASES OVER THE COURSE OF THE TWO YEARS
13 SUBSEQUENT TO THE TRAINING PROPORTIONATELY BASED ON THE NUMBER
14 OF MONTHS THAT HAVE PASSED SINCE THE COMPLETION OF THE TRAINING,
15 AND THE EMPLOYER RECOVERING FOR THE COSTS OF THE TRAINING WOULD
16 NOT VIOLATE THE "FAIR LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC.
17 201 ET SEQ., OR ARTICLE 4 OF TITLE 8;

18 (b) A REASONABLE CONFIDENTIALITY PROVISION RELEVANT TO
19 THE EMPLOYER'S BUSINESS THAT DOES NOT PROHIBIT DISCLOSURE OF
20 INFORMATION THAT ARISES FROM THE WORKER'S GENERAL TRAINING,
21 KNOWLEDGE, SKILL, OR EXPERIENCE, WHETHER GAINED ON THE JOB OR
22 OTHERWISE, █ INFORMATION THAT IS READILY ASCERTAINABLE TO THE
23 PUBLIC, OR INFORMATION THAT A WORKER OTHERWISE HAS A RIGHT TO
24 DISCLOSE AS LEGALLY PROTECTED CONDUCT;

25 (c) A COVENANT FOR THE PURCHASE AND SALE OF A BUSINESS OR
26 THE ASSETS OF A BUSINESS; OR

27 (d) A PROVISION REQUIRING THE REPAYMENT OF A SCHOLARSHIP

1 PROVIDED TO AN INDIVIDUAL WORKING IN AN APPRENTICESHIP IF THE
2 INDIVIDUAL FAILS TO COMPLY WITH THE CONDITIONS OF THE SCHOLARSHIP
3 AGREEMENT.

4 (4) (a) ANY █ COVENANT NOT TO COMPETE THAT IS OTHERWISE
5 PERMISSIBLE UNDER SUBSECTION (2) OR (3) OF THIS SECTION IS VOID
6 UNLESS NOTICE OF THE █ COVENANT NOT TO COMPETE AND THE TERMS
7 OF THE █ COVENANT NOT TO COMPETE ARE PROVIDED TO:

8 (I) A PROSPECTIVE WORKER BEFORE THE WORKER ACCEPTS THE
9 EMPLOYER'S OFFER OF EMPLOYMENT; OR

10 (II) A CURRENT WORKER AT LEAST FOURTEEN DAYS BEFORE THE
11 EARLIER OF:

12 (A) THE EFFECTIVE DATE OF THE █ COVENANT; OR

13 (B) THE EFFECTIVE DATE OF ANY ADDITIONAL COMPENSATION OR
14 CHANGE IN THE TERMS OR CONDITIONS OF EMPLOYMENT THAT PROVIDES
15 CONSIDERATION FOR THE █ COVENANT.

16 (b) AN EMPLOYER SHALL PROVIDE THE NOTICE REQUIRED IN
17 SUBSECTION (4)(a) OF THIS SECTION IN A SEPARATE DOCUMENT FROM ANY
18 OTHER █ COVENANTS BETWEEN THE WORKER AND EMPLOYER AND IN
19 CLEAR AND CONSPICUOUS TERMS IN THE LANGUAGE IN WHICH THE
20 WORKER AND EMPLOYER COMMUNICATE ABOUT THE WORKER'S
21 PERFORMANCE. THE NOTICE MUST BE SIGNED BY THE WORKER.

22 (c) (I) A WORKER MAY REQUEST AN ADDITIONAL COPY OF THE █
23 COVENANT NOT TO COMPETE REQUIRED BY THIS SUBSECTION (4) ONCE
24 EACH CALENDAR YEAR.

25 (II) AN EMPLOYER IS NOT REQUIRED UNDER THIS SUBSECTION (4)
26 TO PROVIDE THE WORKER WITH AN ADDITIONAL COPY OF THE █
27 COVENANT NOT TO COMPETE MORE THAN ONCE DURING A CALENDAR

1 YEAR.

2 (d) AN EMPLOYER SATISFIES THE NOTICE REQUIREMENT OF THIS
3 SUBSECTION (4) WHEN THE NOTICE:

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

6 (II) IDENTIFIES THE AGREEMENT BY NAME AND STATES THAT THE
7 AGREEMENT CONTAINS A COVENANT NOT TO COMPETE THAT COULD
8 RESTRICT THE WORKERS' OPTIONS FOR SUBSEQUENT EMPLOYMENT
9 FOLLOWING THEIR SEPARATION FROM THE EMPLOYER; AND

10 (III) DIRECTS THE WORKER TO THE SPECIFIC SECTIONS OR
11 PARAGRAPHS OF THE AGREEMENT THAT CONTAIN THE COVENANT NOT TO
12 COMPETE.

13 ~~(3)(a)~~ (5) (a) Any covenant not to compete provision of an
14 employment, partnership, or corporate agreement between physicians that
15 restricts the right of a physician to practice medicine, as defined in section
16 12-240-107, upon termination of the agreement, is void; except that all
17 other provisions of the agreement enforceable at law, including
18 provisions that require the payment of damages in an amount that is
19 reasonably related to the injury suffered by reason of termination of the
20 agreement, are enforceable. Provisions of a covenant not to compete that
21 require the payment of damages upon termination of the agreement may
22 include damages related to competition.

23 (b) Notwithstanding ~~subsection (3)(a)~~ SUBSECTION (5)(a) of
24 this section, after termination of an agreement described in ~~subsection~~
25 ~~(3)(a)~~ SUBSECTION (5)(a) of this section, a physician may disclose his or
26 her continuing practice of medicine and new professional contact
27 information to any patient with a rare disorder, as defined in accordance

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

8 ~~(4) A person who violates this section commits a class 2~~
9 ~~misdemeanor.~~

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 (7) A WORKER WHO IS A PARTY TO A COVENANT NOT TO
20 COMPETE, OR A SUBSEQUENT EMPLOYER THAT HAS HIRED OR IS
21 CONSIDERING HIRING THE WORKER, MAY SEEK A DECLARATORY JUDGMENT
22 FROM A COURT OF COMPETENT JURISDICTION OR AN ARBITRATOR THAT
23 THE COVENANT NOT TO COMPETE IS UNENFORCEABLE.

24 (8) (a) AN EMPLOYER SHALL NOT ENTER INTO, PRESENT TO A
25 WORKER OR PROSPECTIVE WORKER AS A TERM OF EMPLOYMENT, OR
26 ATTEMPT TO ENFORCE ANY COVENANT NOT TO COMPETE THAT IS VOID
27 UNDER THIS SECTION.

1 (b) AN EMPLOYER THAT VIOLATES SUBSECTION (8)(a) OF THIS
2 SECTION IS LIABLE FOR ACTUAL DAMAGES AND A PENALTY OF FIVE
3 THOUSAND DOLLARS PER WORKER OR PROSPECTIVE WORKER HARMED BY
4 THE CONDUCT. THE ATTORNEY GENERAL AND ANY WORKER OR
5 PROSPECTIVE WORKER HARMED BY AN EMPLOYER'S CONDUCT MAY BRING
6 AN ACTION FOR INJUNCTIVE RELIEF AND TO RECOVER PENALTIES. IN
7 ADDITION TO INJUNCTIVE RELIEF AND THE PENALTY ALLOWED IN THIS
8 SUBSECTION (8)(b), A WORKER OR PROSPECTIVE WORKER MAY RECOVER
9 ACTUAL DAMAGES, REASONABLE COSTS, AND ATTORNEY FEES IN ANY
10 PRIVATE ACTION BROUGHT UNDER THIS SECTION.

11 (c) IN ANY ACTION BROUGHT UNDER THIS SUBSECTION (8), IF THE
12 EMPLOYER SHOWS THAT THE ACT OR OMISSION GIVING RISE TO SUCH
13 ACTION WAS IN GOOD FAITH AND THAT THE EMPLOYER HAD REASONABLE
14 GROUNDS FOR BELIEVING THAT THE EMPLOYER'S ACT OR OMISSION WAS
15 NOT A VIOLATION OF THIS SECTION, THE COURT MAY, IN ITS SOUND
16 DISCRETION, AWARD THE WORKER OR WORKERS NO PENALTY OR AWARD
17 A PENALTY OF ANY AMOUNT NOT TO EXCEED THE AMOUNT SPECIFIED IN
18 SUBSECTION (8)(b) OF THIS SECTION.

19 **SECTION 2. Act subject to petition - effective date -**
20 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
21 the expiration of the ninety-day period after final adjournment of the
22 general assembly; except that, if a referendum petition is filed pursuant
23 to section 1 (3) of article V of the state constitution against this act or an
24 item, section, or part of this act within such period, then the act, item,
25 section, or part will not take effect unless approved by the people at the
26 general election to be held in November 2022 and, in such case, will take
27 effect on the date of the official declaration of the vote thereon by the

1 governor.

2 (2) This act applies to ■ covenants not to compete entered into

3 or renewed on or after the applicable effective date of this act.