

Senate File 2302 - Introduced

SENATE FILE 2302

BY BOULTON

A BILL FOR

1 An Act relating to prohibitions on noncompete covenants and
2 including applicability provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 95.1 Definitions.

2 For purposes of this chapter:

3 1. "*Covenant not to solicit*" means an agreement that is
4 entered into between an employer and an employee that does any
5 of the following:

6 a. Restricts the employee from soliciting for employment the
7 employer's employees.

8 b. Restricts the employee from soliciting, for the
9 purpose of selling products or services of any kind to, or
10 from interfering with the employer's relationships with, the
11 employer's clients, prospective clients, vendors, prospective
12 vendors, suppliers, prospective suppliers, or other business
13 relationships.

14 2. "*Earnings*" means the compensation, including earned
15 salary, earned bonuses, earned commissions, or any other form
16 of taxable compensation, reflected or that is expected to
17 be reflected as wages, tips, and other compensation on the
18 employee's internal revenue service form W-2 plus any elective
19 deferrals not reflected as wages, tips, and other compensation
20 on the employee's internal revenue service form W-2, such as,
21 without limitation, employee contributions to a 401(k) plan, a
22 403(b) plan, a flexible spending account, or a health savings
23 account, or commuter benefit-related deductions.

24 3. a. "*Noncompete covenant*" means an agreement between an
25 employer and an employee that is entered into that restricts
26 the employee from performing:

27 (1) Any work for another employer for a specific period of
28 time.

29 (2) Any work in a specified geographical area.

30 (3) Work for another employer that is similar to any
31 employee's work for the employer included as a party to the
32 agreement.

33 b. "*Noncompete covenant*" also means an agreement between
34 an employer and an employee that by its terms imposes adverse
35 financial consequences on the former employee if the employee

1 engages in competitive activities after the termination of the
2 employee's employment with the employer.

3 c. "Noncompete covenant" does not include any of the
4 following:

5 (1) A covenant not to solicit.

6 (2) A confidentiality agreement or covenant.

7 (3) A covenant or agreement prohibiting use or disclosure
8 of trade secrets or inventions.

9 (4) Invention assignment agreements or covenants.

10 (5) A covenant or agreement entered into by a person that
11 sells the goodwill of a business and the person's partners,
12 members, or shareholders may agree with the buyer to refrain
13 from carrying on a similar business within a reasonable
14 geographic area and for a reasonable length of time, if the
15 buyer or any person deriving title to the goodwill from the
16 buyer carries on a like business in that area.

17 (6) A covenant or agreement entered into by partners,
18 members, or shareholders, upon or in anticipation of a
19 dissolution of a partnership, limited liability company, or
20 corporation; upon or in anticipation of a dissociation of a
21 partner or member; or as part of an agreement addressing the
22 dissociation or sale of a partner, member, or shareholder's
23 ownership interest, may agree that all or any number of them
24 will not carry on a similar business within a reasonable
25 geographic area where the partnership, limited liability
26 company, or corporation business has been transacted, or within
27 a specified part of the area.

28 Sec. 2. NEW SECTION. 95.2 Impermissible noncompete
29 covenants.

30 The following noncompete covenants are void and violate this
31 chapter:

32 1. A noncompete covenant within an employment agreement
33 or contract in which an employee's earnings are less than one
34 hundred fifty percent of the state or federal minimum wage.

35 2. A noncompete covenant with an employee unless the

1 employer can show beyond a preponderance of the evidence that
2 there is a clear and inherent risk of unfair competition
3 absent the noncompete covenant and the noncompete covenant
4 was narrowly tailored to address the risk in restrictions to
5 geographic area and duration of the noncompete covenant.

6 Sec. 3. NEW SECTION. 95.3 Remedies.

7 In addition to any remedies available under any agreement
8 between the employer and the employee or under any other
9 statute, in a civil action, if an employer is found to have
10 violated this chapter, the employee shall recover from the
11 employer all reasonable attorney fees regarding an attempt to
12 enforce a noncompete covenant, court costs, lost wages, and
13 at the discretion of the court, liquidated damages of up to
14 triple the amount of lost wages for willful violations of this
15 chapter. An employer found to have violated this chapter may
16 be fined a five thousand dollar civil penalty per violation by
17 the division of labor. Penalties shall be paid to the division
18 of labor and transferred to the general fund.

19 Sec. 4. APPLICABILITY. This Act applies to covenants not
20 to compete entered into on or after the effective date of this
21 Act.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to noncompete covenants contained within
26 employment contracts and provisions that are prohibited and
27 void. The bill provides definitions for "covenant not to
28 solicit", "earnings", and "noncompete covenant".

29 The bill provides that if a person makes less than 150
30 percent of the minimum wage, a noncompete covenant is
31 unenforceable and violates the bill. The bill provides
32 that a noncompete covenant with a non-low-wage employee is
33 unenforceable and violates the bill unless the employer can
34 show that the noncompete covenant is necessary due to a clear
35 and inherent risk of unfair competition and the noncompete

1 covenant was narrowly tailored to mitigate the risk.

2 A prevailing employee is entitled to recover reasonable
3 attorney fees, court costs, lost wages, and at the discretion
4 of the court, liquidated damages of up to triple the amount of
5 lost wages for willful violations of the bill. An employer
6 found to be in violation of the bill is subject to a \$5,000
7 penalty per violation payable to the division of labor for
8 deposit in the general fund.

9 The bill applies to covenants not to compete entered into on
10 or after the effective date of the bill.