

SECOND REGULAR SESSION

HOUSE BILL NO. 1833

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

5309H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 431.202, RSMo, and to enact in lieu thereof one new section relating to covenants not to compete.

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

Section A. Section 431.202, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 431.202, to read as follows:

431.202. 1. A reasonable covenant in writing promising not to solicit, recruit, hire or otherwise interfere with the employment of one or more employees shall be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031 if:

(1) Between two or more corporations or other business entities seeking to preserve workforce stability (which shall be deemed to be among the protectable interests of each corporation or business entity) during, and for a reasonable period following, negotiations between such corporations or entities for the acquisition of all or a part of one or more of such corporations or entities;

(2) Between two or more corporations or business entities engaged in a joint venture or other legally permissible business arrangement where such covenant seeks to protect against possible misuse of confidential or trade secret business information shared or to be shared between or among such corporations or entities;

(3) Between an employer and one or more employees seeking on the part of the employer to protect:

(a) Confidential or trade secret business information; or

(b) Customer or supplier relationships, goodwill or loyalty, which shall be deemed to be among the protectable interests of the employer; or

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.

18 (4) Between an employer and one or more employees, notwithstanding the absence of
19 the protectable interests described in subdivision (3) of this subsection, so long as such covenant
20 does not continue for more than one year following the employee's employment; provided,
21 however, that this subdivision shall not apply to covenants signed by employees who provide
22 only secretarial or clerical services.

23 2. Whether a covenant covered by this section is reasonable shall be determined based
24 upon the facts and circumstances pertaining to such covenant, but a covenant covered exclusively
25 by subdivision (3) or (4) of subsection 1 of this section shall be conclusively presumed to be
26 reasonable if its postemployment duration is no more than one year.

27 3. Nothing in subdivision (3) or (4) of subsection 1 of this section is intended to create,
28 or to affect the validity or enforceability of, employer-employee covenants not to compete.

29 4. Nothing in this section shall preclude a covenant described in subsection 1 of this
30 section from being enforceable in circumstances other than those described in subdivisions (1)
31 to (4) of subsection 1 of this section, where such covenant is reasonably necessary to protect a
32 party's legally permissible business interests.

33 5. Nothing in this section shall be construed to limit an employee's ability to seek or
34 accept employment with another employer immediately upon, or at any time subsequent to,
35 termination of employment, whether said termination was voluntary or nonvoluntary.

36 6. This section shall have retrospective as well as prospective effect.

37 **7. Notwithstanding any other provision of law to the contrary, beginning August**
38 **28, 2016, no covenant shall be made under subsection 1 of this section for any employee**
39 **with a degree in science, technology, engineering, or mathematics that is employed in the**
40 **field of science, technology, engineering, or mathematics.**

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