

By: Hinojosa

H.B. No. 1043

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition against covenants not to compete for certain low-wage employees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 15.50(a), Business & Commerce Code, is amended to read as follows:

(a) Notwithstanding Section 15.05 [~~of this code~~], and subject to any applicable provision of Subsection (b) of this section, a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee, except as provided by Section 15.501.

SECTION 2. Subchapter E, Chapter 15, Business & Commerce Code, is amended by adding Section 15.501 to read as follows:

Sec. 15.501. PROHIBITION AGAINST COVENANT NOT TO COMPETE FOR CERTAIN LOW-WAGE EMPLOYEES. (a) In this section:

(1) "Employee" means an individual who is employed by an employer for compensation.

(2) "Employer" means a person who employs one or more employees. The term does not include a public employer.

(b) This section applies only to an employee who earns not

1 more than the greater of:

2 (1) the federal minimum wage under Section 6, Fair
3 Labor Standards Act of 1938 (29 U.S.C. Section 206); or

4 (2) \$15 an hour.

5 (c) An employer may not require an employee to whom this
6 section applies to enter into a covenant not to compete that
7 restricts the employee from performing work:

8 (1) for another employer for a specified period of
9 time;

10 (2) in a specified geographical area; or

11 (3) for another employer similar to the employee's
12 work for the current employer.

13 (d) A covenant not to compete described by Subsection (c) is
14 void and unenforceable.

15 (e) Section 15.51 does not apply to a covenant not to
16 compete described by Subsection (c).

17 SECTION 3. Section 15.52, Business & Commerce Code, is
18 amended to read as follows:

19 Sec. 15.52. PREEMPTION OF OTHER LAW. The criteria for
20 enforceability of a covenant not to compete provided by Sections
21 [Section] 15.50 and 15.501 [of this code] and the procedures and
22 remedies in an action to enforce a covenant not to compete provided
23 by Section 15.51 [of this code] are exclusive and preempt any other
24 criteria for enforceability of a covenant not to compete or
25 procedures and remedies in an action to enforce a covenant not to
26 compete under common law or otherwise.

27 SECTION 4. The change in law made by this Act applies only

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1 to a covenant entered into on or after the effective date of this
2 Act. A covenant entered into before the effective date of this Act
3 is governed by the law in effect at the time the covenant was
4 entered into, and the former law is continued in effect for that
5 purpose.

6 SECTION 5. This Act takes effect September 1, 2023.