

S.3100-A (Ryan)/A.1278-B (Joyner)

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BILL S.3100-A (Ryan)/A.1278-B (Joyner)
SUBJECT Prohibits non-compete agreements and certain restrictive covenants
DATE June 01, 2023
OPPOSE

This bill intends to amend the Labor Law to restrict the use of non-compete agreements and certain restrictive covenants to a wide range of employees. The Business Council, on behalf of its 3,200 members, opposes this proposed legislation.

Non-compete agreements are important tools for employers to protect their legitimate business interests. Employers recognize that these agreements and other restrictive covenants may sometimes limit an employee's ability to work and earn a living.

Because of the serious nature of these agreements, employers do not enter into these

agreements lightly. Through the years, New York Courts have developed a “reasonableness test” that has struck a balance between protecting legitimate employer interests with worker’s abilities to earn a living. We believe this test is adequate in protecting the interests of both parties.

In short, the Courts have held that to be considered enforceable, non-compete provisions must be:

1. No greater than what is required for the protection of the legitimate interest of the employer,
2. Does not impose undue hardships on the employee, and
3. Is not injurious to the public

Importantly, an employer’s legitimate interest has been defined as:

1. Able to prevent disclosure of trade secrets or employee/client solicitation,
2. To prevent disclosure of private client information, or
3. Where the employee has a skill and service that is considered “special or unique.”

The Business Council always suggests to its members to review with counsel all non-compete/restrictive covenant provisions to ensure it complies both with reasonableness and timeliness standards already in place. This legislation would impose upon New York employers another burden of compliance and increase risk to their legitimate business interests that could result in them becoming less competitive with businesses in other states.

For these reasons, The Business Council opposes S.3100-A (Ryan)/A.1278-B (Joyner).

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