LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature Second Regular Session - 2018

IN THE SENATE

SENATE BILL NO. 1287

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT
RELATING TO COVENANTS NOT TO COMPETE; AMENDING SECTION 44-2702, IDAHO CODE, TO PROVIDE FOR APPLICABILITY OF DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 44-2704, IDAHO CODE, TO REMOVE CERTAIN PROVISIONS REGARDING REBUTTABLE PRESUMPTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 44-2702, Idaho Code, be, and the same is hereby amended to read as follows:

44-2702. DEFINITIONS. For purposes of this section chapter, the following terms shall have the following meanings:
(1) "Key employees" and "key independent contractors" shall include those employees or independent contractors who, by reason of the employer's investment of time, money, trust, exposure to the public, or exposure to technologies, intellectual property, business plans, business processes and methods of operation, customers, vendors or other business relationships during the course of employment, have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer, and, as a result, have the ability to harm or threaten an employer's legitimate business interests.
(2) "Legitimate business interests" shall include, but not be limited to, an employer's goodwill, technologies, intellectual property, business plans, business processes and methods of operation, customers, customer lists, customer contacts and referral sources, vendors and vendor contacts, financial and marketing information, and trade secrets as that term is defined by chapter 8, title 48, Idaho Code.

SECTION 2. That Section 44-2704, Idaho Code, be, and the same is hereby amended to read as follows:

44-2704. RESTRICTION OF DIRECT COMPETITION -- REBUTTABLE PRESUMPTIONS. (1) Under no circumstances shall a provision of such agreement or covenant, as set forth herein, establish a postemployment restriction of direct competition that exceed a period of eighteen (18) months from the time of the key employee's or key independent contractor's termination unless consideration, in addition to employment or continued employment, is given to a key employee or key independent contractor. Nothing in this chapter shall be construed to limit a party's ability to otherwise protect trade secrets or other information deemed proprietary or confidential.
(2) It shall be a rebuttable presumption that an agreement or covenant with a postemployment term of eighteen (18) months or less is reasonable as to duration.
It shall be a rebuttable presumption that an agreement or covenant is reasonable as to geographic area if it is restricted to the geographic areas in which the key employee or key independent contractor provided services or had a significant presence or influence.

(4) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to type of employment or line of business if it is limited to the type of employment or line of business conducted by the key employee or key independent contractor, as defined in section 44-2702, Idaho Code, while working for the employer.

(5) It shall be a rebuttable presumption that an employee or independent contractor who is among the highest paid five percent (5%) of the employer's employees or independent contractors is a "key employee" or a "key independent contractor." To rebut such presumption, an employee or independent contractor must show that it has no ability to adversely affect the employer's legitimate business interests.

(6) If a court finds that a key employee or key independent contractor is in breach of an agreement or a covenant, a rebuttable presumption of irreparable harm has been established. To rebut such presumption, the key employee or key independent contractor must show that the key employee or key independent contractor has no ability to adversely affect the employer's legitimate business interests.