

IN THE SENATE

SENATE BILL NO. 1287

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO COVENANTS NOT TO COMPETE; AMENDING SECTION 44-2702, IDAHO CODE,  
2 TO PROVIDE FOR APPLICABILITY OF DEFINITIONS AND TO MAKE TECHNICAL COR-  
3 RECTIONS; AND AMENDING SECTION 44-2704, IDAHO CODE, TO REMOVE CERTAIN  
4 PROVISIONS REGARDING REBUTTABLE PRESUMPTIONS.  
5

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

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

9 44-2702. DEFINITIONS. For purposes of this ~~section~~ chapter, the fol-  
10 lowing terms shall have the following meanings:

11 (1) "Key employees" and "key independent contractors" shall include  
12 those employees or independent contractors who, by reason of the employer's  
13 investment of time, money, trust, exposure to the public, or exposure to  
14 technologies, intellectual property, business plans, business processes  
15 and methods of operation, customers, vendors or other business relation-  
16 ships during the course of employment, have gained a high level of inside  
17 knowledge, influence, credibility, notoriety, fame, reputation or public  
18 persona as a representative or spokesperson of the employer, ~~and,~~ as a re-  
19 sult, have the ability to harm or threaten an employer's legitimate business  
20 interests.

21 (2) "Legitimate business interests" shall include, but not be limited  
22 to, an employer's goodwill, technologies, intellectual property, business  
23 plans, business processes and methods of operation, customers, customer  
24 lists, customer contacts and referral sources, vendors and vendor contacts,  
25 financial and marketing information, and trade secrets as that term is de-  
26 fined by chapter 8, title 48, Idaho Code.

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

29 44-2704. RESTRICTION OF DIRECT COMPETITION -- REBUTTABLE PRESUMP-  
30 TIONS. (1) Under no circumstances shall a provision of such agreement or  
31 covenant, as set forth herein, establish a postemployment restriction of di-  
32 rect competition that exceeds a period of eighteen (18) months from the time  
33 of the key employee's or key independent contractor's termination unless  
34 consideration, in addition to employment or continued employment, is given  
35 to a key employee or key independent contractor. Nothing in this chapter  
36 shall be construed to limit a party's ability to otherwise protect trade  
37 secrets or other information deemed proprietary or confidential.

38 (2) It shall be a rebuttable presumption that an agreement or covenant  
39 with a postemployment term of eighteen (18) months or less is reasonable as  
40 to duration.

1 (3) It shall be a rebuttable presumption that an agreement or covenant  
2 is reasonable as to geographic area if it is restricted to the geographic  
3 areas in which the key employee or key independent contractor provided ser-  
4 vices or had a significant presence or influence.

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

10 ~~(5) It shall be a rebuttable presumption that an employee or indepen-~~  
11 ~~dent contractor who is among the highest paid five percent (5%) of the em-~~  
12 ~~ployer's employees or independent contractors is a "key employee" or a "key~~  
13 ~~independent contractor." To rebut such presumption, an employee or indepen-~~  
14 ~~dent contractor must show that it has no ability to adversely affect the em-~~  
15 ~~ployer's legitimate business interests.~~

16 ~~(6) If a court finds that a key employee or key independent contractor~~  
17 ~~is in breach of an agreement or a covenant, a rebuttable presumption of ir-~~  
18 ~~reparable harm has been established. To rebut such presumption, the key em-~~  
19 ~~ployee or key independent contractor must show that the key employee or key~~  
20 ~~independent contractor has no ability to adversely affect the employer's le-~~  
21 ~~gitimate business interests.~~