

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 491

BY SENATORS TAKUBO, STOLLINGS AND PLYMALE

[Introduced February 3, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §47-11A-12b, relating to noncompete clauses in contracts; providing that
 3 contract which restrains lawful profession, trade or business is void; and including
 4 exceptions.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §47-11A-12b, to read as follows:

ARTICLE 11A. UNFAIR TRADE PRACTICES.

§47-11A-12b. No compete clauses illegal and unenforceable.

1 (a) Any contract by which anyone is restrained from exercising a lawful profession, trade,
 2 or business of any kind, except as provided in subsections (c) and (d) of this section is void and
 3 unenforceable.

4 (b) Any person who enters an agreement with an employer, whether in writing or verbally,
 5 not to compete with the employer after the employment relationship has been terminated, is
 6 permitted to engage in the same business as that conducted by the former employer or in a similar
 7 business as that conducted by the former employer as long as the former employee does not
 8 directly solicit the sale of goods, services or a combination of goods and services from the
 9 established customers of the former employer.

10 (c) Any person who sells the goodwill of a business may agree with the buyer to refrain
 11 from carrying on a similar business within the areas provided in this subsection so long as the
 12 buyer or any person deriving title to the goodwill from the buyer carries on a like business in the
 13 described areas. The agreement authorized by this subsection may apply in:

14 (1) The city where the principal office of the business is located;

15 (2) The county where the principal office of the business is located;

16 (3) A city in any county adjacent to the county in which the principal office of the business
 17 is located;

- 18 (4) Any county adjacent to the county in which the principal office of the business is
- 19 located; or
- 20 (5) Any combination of the areas set forth in subdivisions (1) through (4) of this subsection.
- 21 (d) Partners may, upon dissolution of the partnership, agree that one or more of them may
- 22 not carry on a similar business within the areas provided in subsection (c) of this section.

NOTE: The purpose of this bill is to provide that a contract which restrains a lawful profession, trade or business is void and setting forth exceptions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.