

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0956.01 Yelana Love x2295

**HOUSE BILL 22-1317**

**HOUSE SPONSORSHIP**

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**A BILL FOR AN ACT**

101 **CONCERNING RESTRICTIVE EMPLOYMENT AGREEMENTS.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill declares that a restrictive employment agreement or covenant not to compete that restricts the right of any person to receive compensation for performance of labor for any employer is void, with certain exceptions.

Additionally, if the employer provides proper notice of the restrictive employment agreement or covenant not to compete to the employee or prospective employee, the following agreements or covenants are not prohibited:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

HOUSE  
3rd Reading Unamended  
April 18, 2022

HOUSE  
Amended 2nd Reading  
April 14, 2022

- A provision providing for recovery of the expense of educating and training an employee who has served an employer for a period of less than 2 years, unless the education and training was primarily for the benefit or convenience of the employer;
- A reasonable confidentiality provision relevant to the employer's business that does not prohibit disclosure of information that arises from the employee's general training, knowledge, skill, or experience, whether gained on the job or otherwise, or information that is readily ascertainable to the public; and
- Agreements or covenants with a person earning annual cash compensation greater than the threshold amount for highly compensated employees.

The bill limits choice of law and choice of venue provisions in restrictive employment agreements and covenants not to compete.

The bill prohibits an employer from entering into, presenting to an employee or prospective employee as a term of employment, or attempting to enforce any restrictive employment agreement or covenant not to compete that is void under the bill. An employer who violates this provision is subject to a penalty of \$5,000 for each employee or prospective employee, injunctive relief, and actual damages.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 8-2-113 as  
 3 follows:

4 **8-2-113. Unlawful to intimidate worker - agreement not to**  
 5 **compete - prohibition - exceptions - notice - definition.** (1) **Legislative**  
 6 **intent.** THE GENERAL ASSEMBLY INTENDS TO PRESERVE EXISTING STATE  
 7 AND FEDERAL CASE LAW IN EFFECT BEFORE THE EFFECTIVE DATE OF THIS  
 8 ACT THAT:

9 (a) DEFINES WHAT COUNTS AS A COVENANT NOT TO COMPETE  
 10 THAT IS PROHIBITED BY THIS SECTION; AND

11 (b) SPECIFIES THE EXTENT TO WHICH A COVENANT NOT TO  
 12 COMPETE FOR THE PROTECTION OF TRADE SECRETS MUST BE TAILORED IN  
 13 SCOPE IN ORDER TO BE ENFORCEABLE UNDER THIS SECTION.

1           ~~(1)~~ (1.5) (a) It ~~shall be~~ IS unlawful to use force, threats, or other  
2 means of intimidation to prevent any person from engaging in any lawful  
3 occupation at any place ~~he~~ THE PERSON sees fit.

4           (b) A PERSON WHO VIOLATES THIS SUBSECTION (1.5) COMMITS A  
5 CLASS 2 MISDEMEANOR, AS DEFINED IN SECTION 18-1.3-501.

6           (2) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(b) AND (3) OF  
7 THIS SECTION, any  covenant not to compete ~~which~~ THAT restricts the  
8 right of any person to receive compensation for performance of ~~skilled or~~  
9 ~~unskilled~~ labor for any employer ~~shall be~~ IS void. ~~but this subsection (2)~~  
10 ~~shall not apply to:~~

11           (b) THIS SUBSECTION (2) DOES NOT APPLY TO A COVENANT NOT TO  
12 COMPETE GOVERNING A PERSON WHO, AT THE TIME THE COVENANT NOT TO  
13 COMPETE IS ENTERED INTO AND AT THE TIME IT IS ENFORCED, EARNS AN  
14 AMOUNT OF ANNUALIZED CASH COMPENSATION EQUIVALENT TO OR  
15 GREATER THAN THE THRESHOLD AMOUNT FOR HIGHLY COMPENSATED  
16 WORKERS, IF THE COVENANT NOT TO COMPETE IS FOR THE PROTECTION OF  
17 TRADE SECRETS AND IS NO BROADER THAN IS REASONABLY NECESSARY TO  
18 PROTECT THE EMPLOYER'S LEGITIMATE INTEREST IN PROTECTING TRADE  
19 SECRETS.

20           ~~(a) Any contract for the purchase and sale of a business or the~~  
21 ~~assets of a business;~~

22           ~~(b) Any contract for the protection of trade secrets;~~

23           (c) AS USED IN SUBSECTION (2)(b) OF THIS SECTION:

24           (I) "ANNUALIZED CASH COMPENSATION" MEANS:

25           (A) THE AMOUNT OF THE GROSS SALARY OR WAGE AMOUNT, THE  
26 FEE AMOUNT, OR THE OTHER COMPENSATION AMOUNT FOR THE FULL YEAR,  
27 IF THE PERSON WAS EMPLOYED OR ENGAGED FOR A FULL YEAR.

1 (B) THE COMPENSATION THAT THE PERSON WOULD HAVE EARNED,  
2 BASED ON THE WORKER'S GROSS SALARY OR WAGE AMOUNT, FEE, OR  
3 OTHER COMPENSATION IF THE WORKER WAS NOT EMPLOYED OR ENGAGED  
4 FOR A FULL YEAR.

5 (II) "THRESHOLD AMOUNT" FOR HIGHLY COMPENSATED WORKERS"  
6 MEANS THE GREATER OF THE THRESHOLD AMOUNT FOR HIGHLY  
7 COMPENSATED WORKERS AS DETERMINED BY THE DIVISION OF LABOR  
8 STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND  
9 EMPLOYMENT:

10 (A) AS OF THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED; OR

11 (B) AT THE TIME THE COVENANT NOT TO COMPETE IS EXECUTED  
12 BY THE PARTIES.

13 ~~(c) Any contractual provision providing for recovery of the~~  
14 ~~expense of educating and training an employee who has served an~~  
15 ~~employer for a period of less than two years;~~

16 ~~(d) Executive and management personnel and officers and~~  
17 ~~employees who constitute professional staff to executive and management~~  
18 ~~personnel.~~

19 (III) IN DETERMINING WHETHER A WORKER'S CASH COMPENSATION  
20 EXCEEDS THE THRESHOLD AMOUNT, WHERE THE WORKER HAS BEEN  
21 EMPLOYED FOR LESS THAN A CALENDAR YEAR, THE WORKER'S CASH  
22 COMPENSATION EXCEEDS THE THRESHOLD AMOUNT IF THE WORKER  
23 WOULD REASONABLY EXPECT TO EARN MORE THAN THE THRESHOLD  
24 AMOUNT DURING A CALENDAR YEAR OF EMPLOYMENT.

25 (3) THE FOLLOWING COVENANTS ARE NOT PROHIBITED BY  
26 SUBSECTION (2) OF THIS SECTION:

27 (a) A PROVISION PROVIDING FOR AN EMPLOYER'S RECOVERY OF

1 THE EXPENSE OF EDUCATING AND TRAINING A WORKER \_\_\_\_\_ WHERE THE  
2 TRAINING IS DISTINCT FROM NORMAL, ON-THE-JOB TRAINING, THE  
3 EMPLOYER'S RECOVERY IS LIMITED TO THE REASONABLE COSTS OF THE  
4 TRAINING AND DECREASES OVER THE COURSE OF THE TWO YEARS  
5 SUBSEQUENT TO THE TRAINING PROPORTIONATELY BASED ON THE NUMBER  
6 OF MONTHS THAT HAVE PASSED SINCE THE COMPLETION OF THE TRAINING,  
7 AND THE EMPLOYER RECOVERING FOR THE COSTS OF THE TRAINING WOULD  
8 NOT VIOLATE THE "FAIR LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC.  
9 201 ET SEQ., OR ARTICLE 4 OF TITLE 8;

10 (b) A REASONABLE CONFIDENTIALITY PROVISION RELEVANT TO  
11 THE EMPLOYER'S BUSINESS THAT DOES NOT PROHIBIT DISCLOSURE OF  
12 INFORMATION THAT ARISES FROM THE WORKER'S GENERAL TRAINING,  
13 KNOWLEDGE, SKILL, OR EXPERIENCE, WHETHER GAINED ON THE JOB OR  
14 OTHERWISE, INFORMATION THAT IS READILY ASCERTAINABLE TO THE  
15 PUBLIC, OR INFORMATION THAT A WORKER OTHERWISE HAS A RIGHT TO  
16 DISCLOSE AS LEGALLY PROTECTED CONDUCT;

17 (c) A COVENANT FOR THE PURCHASE AND SALE OF A BUSINESS OR  
18 THE ASSETS OF A BUSINESS; OR

19 (d) A PROVISION REQUIRING THE REPAYMENT OF A SCHOLARSHIP  
20 PROVIDED TO AN INDIVIDUAL WORKING IN AN APPRENTICESHIP IF THE  
21 INDIVIDUAL FAILS TO COMPLY WITH THE CONDITIONS OF THE SCHOLARSHIP  
22 AGREEMENT.

23 (4) (a) ANY COVENANT NOT TO COMPETE THAT IS OTHERWISE  
24 PERMISSIBLE UNDER SUBSECTION (2) OR (3) OF THIS SECTION IS VOID  
25 UNLESS NOTICE OF THE COVENANT NOT TO COMPETE AND THE TERMS  
26 OF THE COVENANT NOT TO COMPETE ARE PROVIDED TO:

27 (I) A PROSPECTIVE WORKER BEFORE THE WORKER ACCEPTS THE

1 EMPLOYER'S OFFER OF EMPLOYMENT; OR

2 (II) A CURRENT WORKER AT LEAST FOURTEEN DAYS BEFORE THE  
3 EARLIER OF:

4 (A) THE EFFECTIVE DATE OF THE COVENANT; OR

5 (B) THE EFFECTIVE DATE OF ANY ADDITIONAL COMPENSATION OR  
6 CHANGE IN THE TERMS OR CONDITIONS OF EMPLOYMENT THAT PROVIDES  
7 CONSIDERATION FOR THE COVENANT.

8 (b) AN EMPLOYER SHALL PROVIDE THE NOTICE REQUIRED IN  
9 SUBSECTION (4)(a) OF THIS SECTION IN A SEPARATE DOCUMENT FROM ANY  
10 OTHER COVENANTS BETWEEN THE WORKER AND EMPLOYER AND IN  
11 CLEAR AND CONSPICUOUS TERMS IN THE LANGUAGE IN WHICH THE  
12 WORKER AND EMPLOYER COMMUNICATE ABOUT THE WORKER'S  
13 PERFORMANCE. THE NOTICE MUST BE SIGNED BY THE WORKER.

14 (c) (I) A WORKER MAY REQUEST AN ADDITIONAL COPY OF THE  
15 COVENANT NOT TO COMPETE REQUIRED BY THIS SUBSECTION (4) ONCE  
16 EACH CALENDAR YEAR.

17 (II) AN EMPLOYER IS NOT REQUIRED UNDER THIS SUBSECTION (4)  
18 TO PROVIDE THE WORKER WITH AN ADDITIONAL COPY OF THE  
19 COVENANT NOT TO COMPETE MORE THAN ONCE DURING A CALENDAR  
20 YEAR.

21 (d) AN EMPLOYER SATISFIES THE NOTICE REQUIREMENT OF THIS  
22 SUBSECTION (4) WHEN THE NOTICE:

23 (I) IS PROVIDED WITH A COPY OF THE AGREEMENT CONTAINING THE  
24 COVENANT NOT TO COMPETE;

25 (II) IDENTIFIES THE AGREEMENT BY NAME AND STATES THAT THE  
26 AGREEMENT CONTAINS A COVENANT NOT TO COMPETE THAT COULD  
27 RESTRICT THE WORKERS' OPTIONS FOR SUBSEQUENT EMPLOYMENT

1 FOLLOWING THEIR SEPARATION FROM THE EMPLOYER; AND

2 (III) DIRECTS THE WORKER TO THE SPECIFIC SECTIONS OR  
3 PARAGRAPHS OF THE AGREEMENT THAT CONTAIN THE COVENANT NOT TO  
4 COMPETE.

5 ~~(3)(a)~~ (5) (a) Any covenant not to compete provision of an  
6 employment, partnership, or corporate agreement between physicians that  
7 restricts the right of a physician to practice medicine, as defined in section  
8 12-240-107, upon termination of the agreement, is void; except that all  
9 other provisions of the agreement enforceable at law, including  
10 provisions that require the payment of damages in an amount that is  
11 reasonably related to the injury suffered by reason of termination of the  
12 agreement, are enforceable. Provisions of a covenant not to compete that  
13 require the payment of damages upon termination of the agreement may  
14 include damages related to competition.

15 (b) Notwithstanding ~~subsection (3)(a)~~ SUBSECTION (5)(a) of  
16 this section, after termination of an agreement described in ~~subsection~~  
17 ~~(3)(a)~~ SUBSECTION (5)(a) of this section, a physician may disclose his or  
18 her continuing practice of medicine and new professional contact  
19 information to any patient with a rare disorder, as defined in accordance  
20 with criteria developed by the National Organization for Rare Disorders,  
21 Inc., or a successor organization, to whom the physician was providing  
22 consultation or treatment before termination of the agreement. Neither the  
23 physician nor the physician's employer, if any, is liable to any party to the  
24 prior agreement for damages alleged to have resulted from the disclosure  
25 or from the physician's treatment of the patient after termination of the  
26 prior agreement.

27 ~~(4) A person who violates this section commits a class 2~~

1     **misdemeanor.**

2           (6) A COVENANT NOT TO COMPETE THAT APPLIES TO A WORKER  
3     WHO, AT THE TIME OF TERMINATION OF EMPLOYMENT PRIMARILY RESIDED  
4     OR WORKED IN COLORADO, MAY NOT REQUIRE THE WORKER TO  
5     ADJUDICATE THE ENFORCEABILITY OF THE COVENANT OUTSIDE OF  
6     COLORADO. NOTWITHSTANDING ANY CONTRACTUAL PROVISION TO THE  
7     CONTRARY, COLORADO LAW GOVERNS THE ENFORCEABILITY OF A  
8     COVENANT NOT TO COMPETE FOR A WORKER WHO AT THE TIME OF  
9     TERMINATION OF EMPLOYMENT PRIMARILY RESIDED AND WORKED IN  
10    COLORADO.

11           (7) A WORKER WHO IS A PARTY TO     A COVENANT NOT TO  
12    COMPETE, OR A SUBSEQUENT EMPLOYER THAT HAS HIRED OR IS  
13    CONSIDERING HIRING THE WORKER, MAY SEEK A DECLARATORY JUDGMENT  
14    FROM A COURT OF COMPETENT JURISDICTION OR AN ARBITRATOR THAT  
15    THE     COVENANT NOT TO COMPETE IS UNENFORCEABLE.

16           (8) (a) AN EMPLOYER SHALL NOT ENTER INTO, PRESENT TO A  
17    WORKER OR PROSPECTIVE WORKER AS A TERM OF EMPLOYMENT, OR  
18    ATTEMPT TO ENFORCE ANY     COVENANT NOT TO COMPETE THAT IS VOID  
19    UNDER THIS SECTION.

20           (b) AN EMPLOYER THAT VIOLATES SUBSECTION (8)(a) OF THIS  
21    SECTION IS LIABLE FOR ACTUAL DAMAGES AND A PENALTY OF FIVE  
22    THOUSAND DOLLARS PER WORKER OR PROSPECTIVE WORKER HARMED BY  
23    THE CONDUCT. THE ATTORNEY GENERAL AND ANY WORKER OR  
24    PROSPECTIVE WORKER HARMED BY AN EMPLOYER'S CONDUCT MAY BRING  
25    AN ACTION FOR INJUNCTIVE RELIEF AND TO RECOVER PENALTIES. IN  
26    ADDITION TO INJUNCTIVE RELIEF AND THE PENALTY ALLOWED IN THIS  
27    SUBSECTION (8)(b), A WORKER OR PROSPECTIVE WORKER MAY RECOVER



1 ACTUAL DAMAGES, REASONABLE COSTS, AND ATTORNEY FEES IN ANY  
2 PRIVATE ACTION BROUGHT UNDER THIS SECTION.

3 (c) IN ANY ACTION BROUGHT UNDER THIS SUBSECTION (8), IF THE  
4 EMPLOYER SHOWS THAT THE ACT OR OMISSION GIVING RISE TO SUCH  
5 ACTION WAS IN GOOD FAITH AND THAT THE EMPLOYER HAD REASONABLE  
6 GROUNDS FOR BELIEVING THAT THE EMPLOYER'S ACT OR OMISSION WAS  
7 NOT A VIOLATION OF THIS SECTION, THE COURT MAY, IN ITS SOUND  
8 DISCRETION, AWARD THE WORKER OR WORKERS NO PENALTY OR AWARD  
9 A PENALTY OF ANY AMOUNT NOT TO EXCEED THE AMOUNT SPECIFIED IN  
10 SUBSECTION (8)(b) OF THIS SECTION.

11 **SECTION 3. Act subject to petition - effective date -**  
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
13 the expiration of the ninety-day period after final adjournment of the  
14 general assembly; except that, if a referendum petition is filed pursuant  
15 to section 1 (3) of article V of the state constitution against this act or an  
16 item, section, or part of this act within such period, then the act, item,  
17 section, or part will not take effect unless approved by the people at the  
18 general election to be held in November 2022 and, in such case, will take  
19 effect on the date of the official declaration of the vote thereon by the  
20 governor.

21 (2) This act applies to [ ] covenants not to compete entered into  
22 or renewed on or after the applicable effective date of this act.