



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3971/1
MIM:cjs

2023 ASSEMBLY BILL 481

October 12, 2023 - Introduced by Representatives J. ANDERSON, C. ANDERSON, BARE, CABRERA, CONLEY, CONSIDINE, EMERSON, GOYKE, HAYWOOD, JOERS, OHNSTAD, ORTIZ-VELEZ, PALMERI, RATCLIFF, SHANKLAND, SHELTON, SNODGRASS, STUBBS and SUBECK, cosponsored by Senators LARSON, AGARD, CARPENTER, SMITH, SPREITZER, TAYLOR and WIRCH. Referred to Committee on Labor and Integrated Employment.

1 **AN ACT to renumber and amend** 103.465; **to amend** 103.465 (title); and **to**
2 **create** 103.465 (1m) and 103.465 (3) and (4) of the statutes; **relating to:**
3 covenants not to compete in employment contracts.

Analysis by the Legislative Reference Bureau

Under current law, a restrictive covenant in an employment contract that prohibits an assistant, servant, or agent from competing with his or her employer or principal during the term of the employment or agency, or after the termination of the employment or agency, within a specified territory and during a specified time is lawful and enforceable if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Such a covenant that imposes an unreasonable restraint is illegal, void, and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.

This bill makes most such covenants illegal, void, and unenforceable after the termination of employment or agency. A nondisclosure agreement related to personal information of the the employer or principal or the customers of the employer or principal or a restrictive covenant prohibiting the unauthorized use by a former employee or agent of a customer list or intellectual property owned or licensed by the employer or principal is not illegal, void, or unenforceable under the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ASSEMBLY BILL 481**SECTION 1**

1 **SECTION 1.** 103.465 (title) of the statutes is amended to read:

2 **103.465** (title) ~~**Restrictive covenants**~~ **Covenants not to compete in**
3 **employment contracts.**

4 **SECTION 2.** 103.465 of the statutes is renumbered 103.465 (2) and amended to
5 read:

6 103.465 **(2)** COVENANTS IN EMPLOYMENT CONTRACTS NOT TO COMPETE WHILE
7 EMPLOYED. A covenant by an assistant, servant, employee, or agent not to compete
8 with his or her employer or principal during the term of the employment or agency,
9 ~~or after the termination of that employment or agency~~, within a specified territory
10 and during a specified time is lawful and enforceable only if the restrictions imposed
11 are reasonably necessary for the protection of the employer or principal. Any
12 covenant, described in this section, ~~imposing~~ subsection, that imposes an
13 unreasonable restraint on trade is illegal, void, and unenforceable even as to any part
14 of the covenant or performance that would be a reasonable restraint on trade.

15 **SECTION 3.** 103.465 (1m) of the statutes is created to read:

16 103.465 **(1m)** DEFINITIONS. In this section:

17 (a) “Copyright” means a work of authorship, including writings, music, and
18 works of art, that has been tangibly expressed and that is protected by the federal
19 Copyright Act, 17 USC 101 to 1332, or common law.

20 (b) “Customer list” means any information about a customer that is not
21 available to a competitor of an employer or principal, including personal information
22 and past purchases of goods or services from the employer or principal.

23 (c) “Intellectual property” means copyrights, patents, trademarks, trade
24 secrets, and any other type of commonly recognized intellectual property.

ASSEMBLY BILL 481

1 (d) "Nondisclosure agreement" means a written agreement or provision that
2 prohibits the disclosure of personal information about an employer or principal or a
3 customer of an employer or principal.

4 (e) "Patent" means a right to an invention protected under 35 USC 251 to 329.

5 (f) "Trade secret" has the meaning given in s. 134.90 (1) (c).

6 **SECTION 4.** 103.465 (3) and (4) of the statutes are created to read:

7 103.465 (3) COVENANTS IN EMPLOYMENT CONTRACTS NOT TO COMPETE AFTER
8 TERMINATION OF EMPLOYMENT OR AGENCY. A covenant by an assistant, servant,
9 employee, or agent not to compete with his or her employer or principal after the
10 termination of the employment or agency imposes an unreasonable restraint on
11 trade and is illegal, void, and unenforceable even as to any part of the covenant that
12 would be a reasonable restraint on trade. This subsection does not apply to a
13 nondisclosure agreement or to a covenant not to compete that is limited to
14 prohibiting or restricting the unauthorized use of a customer list or intellectual
15 property owned or licensed by the employer or principal.

16 (4) NOTICE POSTED. Each employer and principal shall post, in one or more
17 conspicuous places where notices to assistants, servants, employees, and agents are
18 customarily posted, and in a conspicuous place on the employer's or principal's
19 website, if the employer or principal maintains a website, a notice in a form approved
20 by the department that explains that covenants not to compete after termination of
21 employment or agency, subject to the exceptions in sub. (3), are an unreasonable
22 restraint on trade and are illegal, void, and unenforceable.

23 **SECTION 5. Initial applicability.**

