

HOUSE BILL NO. HB0038

Contracts in restraint of trade.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to contracts; providing that contractual
2 provisions in restraint of trade are void; providing
3 exceptions; providing definitions; specifying
4 applicability; and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 1-23-108 is created to read:

9

10 **1-23-108. Contractual provisions in restraint of**
11 **trade generally void; exceptions.**

12

13 (a) As used in this section:

14

15 (i) "Business entity" means:

16

1 (A) Any sole proprietorship or any
2 partnership, including a limited partnership or a limited
3 liability partnership; or

4

5 (B) Any corporation or limited liability
6 company, including a series limited liability company.

7

8 (ii) "Owner of a business entity" means:

9

10 (A) Any sole proprietor or any partner in a
11 partnership, including a limited partnership or a limited
12 liability partnership; or

13

14 (B) Any member of a limited liability
15 company, including a series of a limited liability company,
16 or any owner of capital stock of a corporation.

17

18 (iii) "Ownership interest" means:

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20 (A) An interest in a sole proprietorship or
21 in a partnership, including a limited partnership or a
22 limited liability partnership; or

23

1 (B) A capital stockholder of a corporation
2 or a membership interest in a limited liability company,
3 including a series of a limited liability company.

4

5 (iv) "Specialized training" refers to
6 instruction or education that a person receives to develop
7 the person's job skills in a particular field of expertise
8 or for a particular purpose;

9

10 (v) "Subsidiary" means any business entity over
11 which the selling business entity:

12

13 (A) Has voting control; or

14

15 (B) From which the selling business entity
16 has a right to receive a majority share of distributions
17 upon dissolution or other liquidation of the business
18 entity or has both voting control and a right to receive
19 these distributions.

20

21 (vi) "Substantially all" means not less than
22 eighty percent (80%).

23 (vii) "Executive personnel" shall mean managers of the business, divisions, locations,
or departments; and any high-level employees with access to trade secrets or specialized
information specific to the business including but not limited to internal financials,
estimating, business strategies, estimating, cost analysis and pricing.

1 (b) Any provision contained in any contract by which
2 a person is restrained from engaging in a lawful
3 profession, trade or business of any kind is to that extent
4 void, except as otherwise provided in this section. The
5 voiding of one (1) or more provisions under this subsection
6 shall not affect or render the remainder of the contract
7 invalid.

8

9 (c) Subsection (b) of this section shall not apply
10 to:

11

12 (i) Any provision in a contract where a person
13 is selling the goodwill of a business entity or is selling
14 or otherwise disposing of all of the person's ownership
15 interest in a business entity to which the contract by
16 which the person is restrained applies;

17

18 (ii) Any contract provision that prohibits an
19 employee from misappropriating an employer's trade secrets
20 as defined by W.S. 6-3-501(a)(xi) or other proprietary
21 business information not readily available to the public;

22

1 (iii) Executive personnel and officers of the
2 business entity;

3 (iv) Any owner of a business entity; or

4 (v) Any contract provision that requires an
5 employee to reimburse an employer for:

6

7 (A) The employer's actual expenses paid to
8 third parties for specialized training of the employee in
9 the event that the employee separates from the employer and
10 works for a competitor within two (2) years of the receipt
11 of the specialized training; or

12

13 (B) The employer's actual cost of a hiring
14 bonus paid to an employee where the employee separates from
15 the employer within three (3) years of initial hiring.

16

17 (d) Any member of a partnership, upon or in
18 anticipation of a dissolution of the partnership or the
19 dissociation of the member from the partnership, may agree
20 to not ~~carry on~~ own, manage, operate, join, manage, or become an employee of a a similar business within a specified
21 geographic area where the partnership's business has been
22 transacted if another member of the partnership, or any
23 person deriving title to the business or its goodwill from

1 another member of the partnership, carries on a like
2 business or continues to carry on the business of the
3 partnership in the specified geographic area.

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5 (e) Any member of a limited liability company, or
6 shareholder of a statutory close corporation or a
7 corporation under subchapter S of the Internal Revenue
8 Code, upon or in anticipation of a dissolution or the
9 termination of the member or shareholder's interest in the
10 company or corporation, may agree to not ~~carry on~~ *own, manage, operate, join, manage, or become an employee of a* a similar
11 business within a specified geographic area where the
12 company or corporation's business has been transacted, if
13 another member or shareholder, or any person deriving title
14 to the business or its goodwill from another member or
15 shareholder of the company or corporation, carries on a
16 like business or continues to carry on the business of the
17 company or corporation within the specified geographic
18 area.

19

20 (f) Any owner of a business entity selling the
21 business entity under one (1) or more of the circumstances
22 enumerated in this subsection may agree to refrain from
23 ~~carrying on~~ *owning, managing, operating, joining, managing, or becoming an employee of a* a similar business within a specified

1 geographic area in which the business so sold, or that of
2 the business entity, division or subsidiary has been
3 carried on, if the buyer or any person deriving title to
4 the goodwill or ownership interest from the buyer, carries
5 on a like business in the specified geographic area:

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7 (i) Selling all of the ownership interest of any
8 subsidiary of a business entity;

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10 (ii) Selling all or substantially all of the
11 business entity's operating assets or the operating assets
12 of a division or a subsidiary of the business entity
13 together with the goodwill of that division or subsidiary;
14 or

15

16 (iii) Selling all or substantially all of the
17 business entity's operating assets together with the
18 goodwill of the business entity.

19

20 **Section 2.** This act shall apply only to contracts
21 entered into on or after July 1, 2022.

22

1 **Section 3.** This act is effective July 1, 2022.

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(END)