

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 487

BY BUSINESS COMMITTEE

AN ACT

1
2 RELATING TO AGREEMENTS AND COVENANTS PROTECTING LEGITIMATE BUSINESS IN-
3 TERESTS; AMENDING SECTION 44-2704, IDAHO CODE, TO PROVIDE THAT A RE-
4 BUTTABLE PRESUMPTION OF IRREPARABLE HARM IS ESTABLISHED UNDER CERTAIN
5 CIRCUMSTANCES.

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

7 SECTION 1. That Section 44-2704, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 44-2704. RESTRICTION OF DIRECT COMPETITION -- REBUTTABLE PRESUMP-
10 TIONS. (1) Under no circumstances shall a provision of such agreement or
11 covenant, as set forth herein, establish a postemployment restriction of di-
12 rect competition that exceeds a period of eighteen (18) months from the time
13 of the key employee's or key independent contractor's termination unless
14 consideration, in addition to employment or continued employment, is given
15 to a key employee or key independent contractor. Nothing in this chapter
16 shall be construed to limit a party's ability to otherwise protect trade
17 secrets or other information deemed proprietary or confidential.

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

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

25 (4) It shall be a rebuttable presumption that an agreement or covenant
26 is reasonable as to type of employment or line of business if it is limited to
27 the type of employment or line of business conducted by the key employee or
28 key independent contractor while working for the employer.

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

35 (6) If a court finds that a key employee or key independent contractor
36 is in breach of an agreement or a covenant, a rebuttable presumption of ir-
37 reparable harm has been established. To rebut such presumption, the key em-
38 ployee or key independent contractor must show that the key employee or key
39 independent contractor has no ability to adversely affect the employer's le-
40 gitimate business interests.