

IN THE SENATE

SENATE BILL NO. 1287, As Amended

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO COVENANTS NOT TO COMPETE; AMENDING SECTION 44-2702, IDAHO CODE,
2 TO PROVIDE FOR APPLICABILITY OF DEFINITIONS AND TO MAKE TECHNICAL COR-
3 RECTIONS; AND AMENDING SECTION 44-2704, IDAHO CODE, TO REMOVE A PROVI-
4 SION REGARDING REBUTTABLE PRESUMPTIONS.
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6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 44-2702, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 44-2702. DEFINITIONS. For purposes of this ~~section~~ chapter, the fol-
10 lowing terms shall have the following meanings:

11 (1) "Key employees" and "key independent contractors" shall include
12 those employees or independent contractors who, by reason of the employer's
13 investment of time, money, trust, exposure to the public, or exposure to
14 technologies, intellectual property, business plans, business processes
15 and methods of operation, customers, vendors or other business relation-
16 ships during the course of employment, have gained a high level of inside
17 knowledge, influence, credibility, notoriety, fame, reputation or public
18 persona as a representative or spokesperson of the employer, ~~and,~~ as a re-
19 sult, have the ability to harm or threaten an employer's legitimate business
20 interests.

21 (2) "Legitimate business interests" shall include, but not be limited
22 to, an employer's goodwill, technologies, intellectual property, business
23 plans, business processes and methods of operation, customers, customer
24 lists, customer contacts and referral sources, vendors and vendor contacts,
25 financial and marketing information, and trade secrets as that term is de-
26 fined by chapter 8, title 48, Idaho Code.

27 SECTION 2. That Section 44-2704, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 44-2704. RESTRICTION OF DIRECT COMPETITION -- REBUTTABLE PRESUMP-
30 TIONS. (1) Under no circumstances shall a provision of such agreement or
31 covenant, as set forth herein, establish a postemployment restriction of di-
32 rect competition that exceeds a period of eighteen (18) months from the time
33 of the key employee's or key independent contractor's termination unless
34 consideration, in addition to employment or continued employment, is given
35 to a key employee or key independent contractor. Nothing in this chapter
36 shall be construed to limit a party's ability to otherwise protect trade
37 secrets or other information deemed proprietary or confidential.

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

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

5 (4) It shall be a rebuttable presumption that an agreement or covenant
6 is reasonable as to type of employment or line of business if it is limited to
7 the type of employment or line of business conducted by the key employee or
8 key independent contractor, as defined in section 44-2702, Idaho Code, while
9 working for the employer.

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

16 ~~(6) If a court finds that a key employee or key independent contractor~~
17 ~~is in breach of an agreement or a covenant, a rebuttable presumption of ir-~~
18 ~~reparable harm has been established. To rebut such presumption, the key em-~~
19 ~~ployee or key independent contractor must show that the key employee or key~~
20 ~~independent contractor has no ability to adversely affect the employer's le-~~
21 ~~gitimate business interests.~~