

## New York Assembly Passes Bill to Ban Non-Competes

On June 20, 2023, the New York State Assembly passed S3100A (Ryan)/A1278B (Joyner) on non-compete agreements and certain restrictive covenants. All Democratic senators and all but eight Democratic assembly members voted for the bill's passage. This bill will be sent to Governor Kathy Hochul's desk for review, but there is no timetable yet on when that will be. Once sent, the bill can be signed, vetoed, negotiated for chapter amendments, or not signed (in which case it is deemed passed unless it is the final week of the year).

### What does the bill prohibit?

The bill prohibits any "employer or its agent, or the officer or agent of any corporation, partnership, limited liability company, or other entity" from seeking, requiring, demanding, or accepting a non-compete agreement from any covered individual. The bill would also render void "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind."

### Would it apply retroactively?

No. The bill states that "it shall be applicable to contracts entered into or modified after the effective date of the law."

### How does the bill define non-competes?

The bill defines "**non-compete agreements**" broadly as "any agreement, or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement."

### What about other restrictive covenants?

The bill includes a carve-out and explains that the bill shall not be construed or interpreted as affecting the ability of an employer to:

- enter into an agreement with a prospective or covered individual that establishes a fixed term of service,
- prohibit disclosure of trade secrets,
- prohibit disclosure of confidential and proprietary client information, or
- prohibit the solicitation of clients of the employer that the covered individual learned about during employment as long as the agreement does not otherwise restrict competition in violation of the bill.

### What type of employees or workers does the bill apply to?

The bill defines a "**covered individual**" broadly as "any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person."

### Are there any industry exceptions?

No.



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**Does it include an exception for the sale of a business?**

No.

**Does the bill give individuals a private cause of action?**

It does. The bill includes a provision that “[a] covered individual may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated this section.”

Covered individuals would have two years to bring an action from the later of:

1. the date they signed the agreement;
2. the date the employment or contract relationship is terminated;
3. the date they learn of the agreement; or
4. the date the employer takes steps to enforce the agreement.

**What remedies would be available under the bill?**

The court shall have jurisdiction to void any non-compete agreement and to order all appropriate relief, including:

- enjoining the conduct of any person or employer;
- ordering payment of liquidated damages (not to exceed \$10,000); and
- awarding lost compensation, damages, reasonable attorneys’ fees, and costs.

**What next?**

This bill will be sent to the governor’s desk for review, but there is no timetable yet on when that will be. Once sent, the bill can be signed, vetoed, negotiated for chapter amendments, or not signed (in which case it is deemed passed unless it is the final week of the year).

If signed, it would take effect on the 30th day after it becomes law and “shall be applicable to contracts entered into or modified on or after such effective date.”

This law would also require a rulemaking process, likely from the New York State Department of Labor.

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