

Bill Regarding Non-Compete Agreements Introduced in New York Legislature

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A bill has been introduced in the New York State Legislature, aiming to clarify the laws of non-compete and non-solicit agreements in New York.

Introduced by Assemblyman Phil Steck on January 15, 2015 and by State Senator Andrew Lanza on March 20, 2015, [the bill \(A2147/S4447\)](#) is entitled “Policy Against Restraint of Trade,” and operates from the premise that the Court of Appeals decision in [BDO Seidman v. Hirshberg, 93 N.Y.2d 382 \(1999\)](#) has led to confusion in the law of non-competes, particularly in the application of a balancing test in which an employer’s interest in enforcing a non-compete or non-solicit covenant is weighed against the employee’s interest in earning a livelihood.

Among other things, if enacted, the bill could render non-competes and non-solicit agreements in New York unenforceable unless they are reasonable in time and/or geographic scope, and only if the employee or independent contractor:

- (1) left the business voluntarily and is unique (i.e., possesses trade secrets of the business or confidential information akin to a trade secret);
- (2) is the seller of any portion of the business; or
- (3) is a “learned professional” other than a lawyer.

The bill currently sits in the Committee on Labor in both chambers of the legislature, and so is a long way from being enacted. We will monitor and report on any further legislative progress of the bill.

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