

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1771

5 By: Johnson (Rob) of the Senate

6 and

7 Schwartz of the House

8 **[noncompetition agreements - requiring modification**
9 **- effective date]**

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 15 O.S. 2011, Section 219A, is
13 amended to read as follows:

14 Section 219A. A. A person ~~who makes~~ may make an agreement with
15 ~~an employer, whether in writing or verbally,~~ not to compete with the
16 ~~an employer after the employment relationship has been terminated,~~
17 ~~shall be permitted to engage in the same business as that conducted~~
18 ~~by the former employer or in a similar business as that conducted by~~
19 ~~the former employer as long as the former employee does not directly~~
20 ~~solicit the sale of goods, services or a combination of goods and~~
21 ~~services from the established customers of the former employer or~~
22 contracting party, as long as such agreement complies with
23 subsections B, C and D of this section, as applicable.

1 ~~B. Any provision in a contract between an employer and an~~
2 ~~employee in conflict with the provisions of this section shall be~~
3 ~~void and unenforceable~~ A person and an employer or contracting party
4 may enter into a written agreement that prohibits the person from
5 directly or indirectly engaging in the same or similar business as
6 that conducted by the employer or contracting party. The person
7 shall have been employed by or working as a contractor for the
8 employer or contracting party for the previous twelve (12) months
9 for such agreement to be effective. The person's compensation for
10 the prior twelve-month period from the date of the end of the
11 employment or contractual relationship shall have been in excess of
12 One Hundred Thousand Dollars (\$100,000.00), which includes wages,
13 bonuses, commissions, stock options or grants and any other form of
14 compensation or benefits provided by the employer or contracting
15 party. A person is subject to this provision regardless of the
16 reason that the employment or contractual relationship ended, unless
17 the employment or contractual relationship is terminated by the
18 employer or contracting party without good cause. The
19 noncompetition agreement shall be limited to a period not to exceed
20 twelve (12) months, and shall be limited to the United States of
21 America. For purposes of this section, "good cause" exists when in
22 the discretion of the employer or contracting party, the person
23 fails to adequately perform his or her job duties and
24

1 responsibilities or fails to act, or commits an act which is not in
2 the best interest of the employer or contracting party.

3 C. A person and an employer or contracting party may enter into
4 a written agreement that prohibits the person from directly or
5 indirectly soliciting or contacting any client, customer, supplier
6 or vendor of the employer or contracting party for a period of up to
7 eighteen (18) months from the end of the employment or contractual
8 relationship, and shall be limited to the United States of America.
9 The solicitation shall encompass the current clients, customers,
10 suppliers and vendors of the employer or contracting party, and may
11 encompass past clients, customers, suppliers or vendors if the
12 person had any contact or conducted business with such parties at
13 any time during the past twelve (12) months of the employment or
14 contractual relationship. A person is subject to this provision
15 regardless of the reason that the employment or contractual
16 relationship ended.

17 D. A person and an employer or contracting party may enter into
18 a written agreement that prohibits the person for a period of up to
19 twelve (12) months from directly or indirectly soliciting, inducing
20 or contacting or directly or indirectly assisting another party from
21 soliciting, inducing or contacting any employee or contractor of the
22 employer or contracting party to terminate his or her employment or
23 contractual relationship to be employed by or provide business
24 assistance or services to another party.

1 E. Any written agreement that conflicts with the terms of
2 subsections B, C and D of this section shall be modified or reformed
3 by a court or administrative body, including an arbitrator, to
4 comply with such subsections. Any court of applicable jurisdiction
5 may award injunctive relief to enforce the terms and provisions of
6 any agreement applicable to this section, including any agreement
7 which may be subject to arbitration.

8 SECTION 2. This act shall become effective November 1, 2012.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO
10 PASS, As Amended and Coauthored.