STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1771 By: Johnson (Rob)

AS INTRODUCED

An Act relating to noncompetition agreements; amending 15 O.S. 2011, Section 219A, which relates to noncompetition agreements; modifying requirements for certain agreements; requiring modification of certain agreements under specified circumstances; authorizing court to grant certain relief; and providing an effective date.

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

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

Section 219A. A. A person ~~who makes~~ may make an agreement ~~with an employer, whether in writing or verbally,~~ not to compete with ~~the~~ an employer ~~after the employment relationship has been terminated, shall be permitted to engage in the same business as that conducted by the former employer or in a similar business as that conducted by the former employer as long as the former employee does not directly solicit the sale of goods, services or a combination of goods and services from the established customers of the former employer~~ or

contracting party, as long as such agreement complies with subsections B, C and D of this section, as applicable.

B. ~~Any provision in a contract between an employer and an employee in conflict with the provisions of this section shall be void and unenforceable~~ A person and an employer or contracting party may enter into a written agreement that prohibits the person from directly or indirectly engaging in the same or similar business as that conducted by the employer or contracting party. The person shall have been employed by or working as a contractor for the employer or contracting party for the previous twelve (12) months for such agreement to be effective. The person's compensation for the prior twelve-month period from the date of the end of the employment or contractual relationship shall have been in excess of One Hundred Thousand Dollars ($100,000.00), which includes wages, bonuses, commissions, stock options or grants and any other form of compensation or benefits provided by the employer or contracting party. A person is subject to this provision regardless of the reason that the employment or contractual relationship ended, unless the employment or contractual relationship is terminated by the employer or contracting party without good cause. The noncompetition agreement shall be limited to a period not to exceed twelve (12) months, and shall be limited to the United States of America. For purposes of this section, "good cause" exists when in the discretion of the employer or contracting party, the person

fails to adequately perform his or her job duties and responsibilities or fails to act, or commits an act which is not in the best interest of the employer or contracting party.

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

D. A person and an employer or contracting party may enter into a written agreement that prohibits the person for a period of up to twelve (12) months from directly or indirectly soliciting, inducing or contacting or directly or indirectly assisting another party from soliciting, inducing or contacting any employee or contractor of the employer or contracting party to terminate his or her employment or

contractual relationship to be employed by or provide business assistance or services to another party.

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

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

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