

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 61

BY RUBEL

AN ACT

RELATING TO EMPLOYERS AND EMPLOYEES; AMENDING SECTION 44-2704, IDAHO CODE,
TO REMOVE A REBUTTABLE PRESUMPTION OF IRREPARABLE HARM IN CONNECTION
WITH NON-COMPETE CLAUSES AND TO REMOVE REQUIREMENTS OF A CERTAIN SHOW-
ING OF AN ADVERSE EFFECT ON AN EMPLOYER'S BUSINESS INTERESTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 44-2704, Idaho Code, be, and the same is hereby
amended to read as follows:

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

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

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

(4) It shall be a rebuttable presumption that an agreement or covenant
is reasonable as to type of employment or line of business if it is limited to
the type of employment or line of business conducted by the key employee or
key independent contractor while working for the employer.

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

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