

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2537

By Delegates Summers, Kelly, Petitto, Heckert,

Forsht, Foggin and E. Pritt

[Introduced January 13, 2023; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §47-18-3 of the Code of West Virginia, 1931, as amended, relating to
2 prohibiting certain contract provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.

§47-18-3. Contracts and combinations in restraint of trade.

1 (a) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint
2 of trade or commerce in this state shall be unlawful.

3 (b) Without limiting the effect of subsection (a) of this section, the following shall be
4 deemed to restrain trade or commerce unreasonably and are unlawful:

5 (1) A contract, combination or conspiracy between two or more persons:

6 (A) for the purpose or with the effect of fixing, controlling, or maintaining the market price,
7 rate or fee of any commodity or service; or

8 (B) fixing, controlling, maintaining, limiting or discontinuing the production, manufacture,
9 mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or
10 with the effect of fixing, controlling or maintaining the market price, rate or fee of the commodity or
11 service; or

12 (C) allocating or dividing customers or markets, functional or geographic, for any
13 commodity or service.

14 (2) A contract, combination or conspiracy between two or more persons whereby, in the
15 letting of any public or private contract:

16 (A) the price quotation of any bid is fixed or controlled; or

17 (B) one or more persons submits a bid intending it to be higher than another bid and thus
18 complementary thereto, submits a bid intending it to be substantially identical to another bid, or
19 refrains from the submission of a bid.

20 (3) A contract, combination or conspiracy between two or more persons refusing to deal
21 with any other person or persons for the purpose of effecting any of the acts described in

22 subdivisions (1) and (2) of this subsection.

23 (c) No employer shall enter into, enforce, or threaten to enforce a covenant not to compete.

24 "Covenant not to compete" means a covenant or agreement, including a provision of a contract of

25 employment, between an employer and employee that restrains, prohibits, or otherwise restricts

26 an individual's ability, following the termination of the individual's employment, to compete with his

27 former employer. A "covenant not to compete" shall not restrict an employee from providing a

28 service to a customer or client of the employer if the employee does not initiate contact with or

29 solicit the customer or client.

NOTE: The purpose of this bill is to prohibit the use of covenants not to compete.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.