

HOUSE BILL 234

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K3
HB 189/03 - ECM

2004 Regular Session
4r1334
CF 4r1346

By: **Delegates McHale, Anderson, Barkley, Barve, Boschert, Branch, Conroy, Cryor, C. Davis, DeBoy, Doory, Feldman, Franchot, Frush, Fulton, Gutierrez, Hammen, Harrison, Healey, Hixson, Howard, Hubbard, Impallaria, Jones, Kach, King, Kirk, Krysiak, Love, Madaleno, Mandel, Marriott, McDonough, McIntosh, Menes, Minnick, Moe, Niemann, Pendergrass, Sophocleus, Stern, Taylor, F. Turner, and Vaughn**

Introduced and read first time: January 23, 2004
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: April 4, 2004

CHAPTER _____

1 AN ACT concerning

2 **Employment Contracts - Labor and Employment - Broadcast Industry**
3 **- Noncompete Provisions Employment Contracts**

4 FOR the purpose of providing that certain provisions in broadcast industry
5 employment contracts ~~may not include noncompete provisions that prohibit the~~
6 ~~right of a broadcast industry employee to seek or obtain certain employment~~
7 ~~after termination of the employment contract or employment relationship;~~
8 ~~providing that a noncompete provision is void and unenforceable; authorizing an~~
9 ~~employee who is the subject of a noncompete provision to seek certain damages,~~
10 ~~attorneys' fees, and costs in a civil action; providing for the application of this~~
11 ~~Act; and generally relating to a prohibition against the inclusion of noncompete~~
12 ~~provisions in that require certain employees or prospective employees to refrain~~
13 ~~from certain activities are presumed to be unreasonable; and generally relating~~
14 to broadcast industry employment contracts.

15 BY adding to
16 Article - Labor and Employment
17 Section 3-708
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2003 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Labor and Employment**

2 3-708.

3 ~~(A) IN THIS SECTION, "BROADCAST INDUSTRY EMPLOYMENT CONTRACT"~~
4 ~~MEANS A CONTRACT OR AGREEMENT THAT ESTABLISHES THE TERMS AND~~
5 ~~CONDITIONS OF EMPLOYMENT BETWEEN A PROSPECTIVE OR CURRENT EMPLOYEE~~
6 ~~AND AN EMPLOYER THAT IS AN ENTITY IN THE BROADCASTING INDUSTRY,~~
7 ~~INCLUDING:~~

8 (1) ~~A TELEVISION STATION;~~9 (2) ~~A TELEVISION NETWORK;~~10 (3) ~~A RADIO STATION;~~11 (4) ~~A RADIO NETWORK;~~12 (5) ~~A SATELLITE-BASED SERVICE SIMILAR TO A BROADCAST STATION~~
13 ~~OR NETWORK;~~14 (6) ~~AN ENTITY AFFILIATED WITH ONE OF THE ENTITIES LISTED IN~~
15 ~~ITEMS (1) THROUGH (5) OF THIS SUBSECTION; OR~~16 (7) ~~ANY OTHER ENTITY THAT PROVIDES BROADCASTING SERVICES~~
17 ~~SUCH AS NEWS, WEATHER, TRAFFIC, SPORTS, OR ENTERTAINMENT PROGRAMMING.~~18 ~~(B) (1) THIS SUBSECTION APPLIES TO A BROADCAST INDUSTRY~~
19 ~~EMPLOYMENT CONTRACT:~~20 (I) ~~THAT IS EXECUTED IN THE STATE;~~21 (II) ~~TO WHICH AN EMPLOYEE IN THE STATE IS A PARTY; OR~~22 (III) ~~TO WHICH AN EMPLOYER DOING BUSINESS IN THE STATE IS A~~
23 ~~PARTY.~~24 (2) ~~A BROADCAST INDUSTRY EMPLOYMENT CONTRACT MAY NOT~~
25 ~~CONTAIN A NONCOMPETE PROVISION THAT RESTRICTS THE RIGHT OF THE~~
26 ~~EMPLOYEE TO SEEK OR OBTAIN EMPLOYMENT WITH ANOTHER EMPLOYER~~
27 ~~DESCRIBED IN SUBSECTION (A) OF THIS SECTION AFTER EXPIRATION OR~~
28 ~~TERMINATION OF THE EMPLOYMENT CONTRACT OR EMPLOYMENT RELATIONSHIP.~~29 (C) ~~A NONCOMPETE PROVISION PROHIBITED UNDER SUBSECTION (B) OF THIS~~
30 ~~SECTION IS VOID AND UNENFORCEABLE.~~31 (D) ~~AN EMPLOYER THAT INCLUDES A NONCOMPETE PROVISION PROHIBITED~~
32 ~~UNDER SUBSECTION (B) OF THIS SECTION IN A BROADCAST INDUSTRY EMPLOYMENT~~
33 ~~CONTRACT MAY BE HELD LIABLE IN A CIVIL ACTION BY THE EMPLOYEE WHO IS THE~~
34 ~~SUBJECT OF THE CLAUSE IN A COURT OF COMPETENT JURISDICTION FOR:~~

1 (1) ~~DAMAGES THAT THE EMPLOYEE SUSTAINS AS A RESULT OF THE~~
2 ~~ATTEMPTED ENFORCEMENT BY THE EMPLOYER OF THE PROHIBITED CLAUSE; AND~~

3 (2) ~~REASONABLE ATTORNEYS' FEES AND COSTS ASSOCIATED WITH ANY~~
4 ~~LITIGATION BY OR AGAINST THE EMPLOYEE THAT RELATES TO THE NONCOMPETE~~
5 ~~CLAUSE.~~

6 (A) IN THIS SECTION, "BROADCAST INDUSTRY EMPLOYMENT CONTRACT"
7 MEANS AN EMPLOYMENT CONTRACT BETWEEN AN INDIVIDUAL AND A LEGAL
8 ENTITY THAT:

9 (1) OWNS ONE OR MORE TELEVISION STATIONS OR NETWORKS;

10 (2) OWNS ONE OR MORE RADIO STATIONS OR NETWORKS; OR

11 (3) PROVIDES BROADCASTING SERVICES SUCH AS NEWS, WEATHER,
12 TRAFFIC, SPORTS, OR ENTERTAINMENT PROGRAMMING.

13 (B) A BROADCAST INDUSTRY EMPLOYMENT CONTRACT THAT INCLUDES A
14 PROVISION THAT REQUIRES AN EMPLOYEE OR PROSPECTIVE EMPLOYEE TO
15 REFRAIN FROM OBTAINING EMPLOYMENT IN A SPECIFIED GEOGRAPHIC AREA FOR A
16 SPECIFIED PERIOD OF TIME FOLLOWING THE EXPIRATION OF THE BROADCAST
17 INDUSTRY EMPLOYMENT CONTRACT OR UPON TERMINATION OF EMPLOYMENT
18 WITHOUT FAULT OF THE EMPLOYEE IS PRESUMED TO BE UNREASONABLE.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
20 any broadcast industry employment contract executed, extended, or renewed on or
21 after the effective date of this Act.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect October 1, 2004.