

In the Supreme Court of Nevada

LONDON SHORES,

Appellant,

vs.

GLOBAL EXPERIENCE SPECIALISTS,
INC.

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A-17-750273-B

NRAP 31(e) NOTICE OF SUPPLEMENTAL AUTHORITY

This authority corresponds to the argument at pages 29-30 of Respondent's Answering Brief, specifically Footnote 8.

Toward the end of the 2017 legislative session, the Nevada Legislature included an amendment to Assembly Bill 276 that, among other things, affirms the enforceability of noncompetition covenants in Nevada, describes the circumstances in which such covenants would be void and unenforceable, and requires courts to revise an unreasonable noncompetition covenant so long as the covenant is supported by valuable consideration. The Governor approved Assembly Bill 276 on June 3, 2017.

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A copy of Assembly Bill 276 is attached as an addendum hereto.

Dated this 1st day of December, 2017.

JOLLEY URG A WOODBURY HOLTHUS & ROSE

BY: /s/ David J. Malley
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2017, a copy of the foregoing NRAP 31(e) Notice of Supplemental Authorities was served on all parties to this action by electronic service through the Clerk's Office of the Nevada Supreme Court to the following:

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I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 1, 2017, at Las Vegas, Nevada.

/s/ Maria Walters
An Employee of JOLLEY URG A WOODBURY HOLTHUS & ROSE

ADDENDUM

ADDENDUM

Assembly Bill No. 276–Assemblymen Spiegel, Joiner, Diaz;
Bilbray-Axelrod, Carlton, Cohen, Miller, Swank, Thompson
and Yeager

Joint Sponsors: Senators Parks; Manendo and Segerblom

CHAPTER.....

AN ACT relating to employment; prohibiting an employer, employment agency or labor organization from discriminating against certain persons for inquiring about, discussing or voluntarily disclosing information about wages under certain circumstances; revising provisions governing noncompetition covenants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes certain employment practices as unlawful and prohibits certain employers, employment agencies and labor organizations from engaging in such practices. (NRS 613.330) With certain exceptions, this prohibition only applies to employers who have 15 or more employees for each working day in each of 20 or more calendar weeks, either in the same or the preceding calendar year as when an unlawful employment practice occurred. (NRS 613.310) **Section 3** of this bill prohibits such an employer, an employment agency or a labor organization from discriminating against a person with respect to employment or membership, as applicable, for inquiring about, discussing or voluntarily disclosing information about wages. This provision does not apply to any person who has access to information about the wages of other persons as part of his or her essential job functions and discloses the information to a person who does not have access to that information, except as ordered by the Labor Commissioner or a court of competent jurisdiction.

Existing law also prohibits a person, association, company or corporation, or agent or officer thereof, from preventing any person who for any cause left or was discharged from their employ from obtaining employment elsewhere in this State. However, under existing law, a person, association, company or corporation, or agent or officer thereof, is not prohibited from negotiating, executing and enforcing an agreement with an employee which, upon termination of employment, prohibits the former employee from pursuing a similar vocation in competition with or becoming employed by a competitor of the former employer. (NRS 613.200) **Section 2** of this bill removes this provision from existing law, allowing for noncompetition agreements. **Section 1** of this bill adds requirements governing noncompetition covenants, providing that such covenants are void and unenforceable unless the covenant: (1) is supported by valuable consideration; (2) does not impose any restraint that is greater than is required for the protection of the employer; (3) does not impose any undue hardship on the employee; and (4) imposes restrictions that are appropriate in relation to the valuable consideration supporting the covenant. **Section 1** further provides that a noncompetition covenant may not restrict a former employee of an employer from providing service to a former customer or client if: (1) the former employee did not solicit the former customer or client; (2) the customer or client voluntarily chose to leave and seek the services of the former employee; and (3) the former employee is otherwise complying with the noncompetition covenant. **Section 1** also provides that if an



employee is terminated because of a reduction in force, reorganization or similar restructuring, a noncompetition covenant is only enforceable during the time in which the employer is paying the employee's salary, benefits or equivalent compensation. Finally, **section 1** provides that if an employer brings an action to enforce a noncompetition covenant and the court finds the covenant contains limitations that are not reasonable and impose a greater restraint than is necessary, the court shall revise the covenant to the extent necessary and enforce the covenant as revised.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 613 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A noncompetition covenant is void and unenforceable unless the noncompetition covenant:

- (a) Is supported by valuable consideration;*
- (b) Does not impose any restraint that is greater than is required for the protection of the employer for whose benefit the restraint is imposed;*
- (c) Does not impose any undue hardship on the employee; and*
- (d) Imposes restrictions that are appropriate in relation to the valuable consideration supporting the noncompetition covenant.*

2. A noncompetition covenant may not restrict a former employee of an employer from providing service to a former customer or client if:

- (a) The former employee did not solicit the former customer or client;*
- (b) The customer or client voluntarily chose to leave and seek services from the former employee; and*
- (c) The former employee is otherwise complying with the limitations in the covenant as to time, geographical area and scope of activity to be restrained, other than any limitation on providing services to a former customer or client who seeks the services of the former employee without any contact instigated by the former employee.*

↪ Any provision in a noncompetition covenant which violates the provisions of this subsection is void and unenforceable.

3. An employer in this State who negotiates, executes or attempts to enforce a noncompetition covenant that is void and unenforceable under this section does not violate the provisions of NRS 613.200.



4. *If the termination of the employment of an employee is the result of a reduction of force, reorganization or similar restructuring of the employer, a noncompetition covenant is only enforceable during the period in which the employer is paying the employee's salary, benefits or equivalent compensation, including, without limitation, severance pay.*

5. *If an employer brings an action to enforce a noncompetition covenant and the court finds the covenant is supported by valuable consideration but contains limitations as to time, geographical area or scope of activity to be restrained that are not reasonable, impose a greater restraint than is necessary for the protection of the employer for whose benefit the restraint is imposed and impose undue hardship on the employee, the court shall revise the covenant to the extent necessary and enforce the covenant as revised. Such revisions must cause the limitations contained in the covenant as to time, geographical area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than is necessary for the protection of the employer for whose benefit the restraint is imposed.*

6. *As used in this section:*

(a) *"Employer" means every person having control or custody of any employment, place of employment or any employee.*

(b) *"Noncompetition covenant" means an agreement between an employer and employee which, upon termination of the employment of the employee, prohibits the employee from pursuing a similar vocation in competition with or becoming employed by a competitor of the employer.*

Sec. 2. NRS 613.200 is hereby amended to read as follows:

613.200 1. Except as otherwise provided in this section **H** and section 1 of this act, any person, association, company or corporation within this State, or any agent or officer on behalf of the person, association, company or corporation, who willfully does anything intended to prevent any person who for any cause left or was discharged from his, her or its employ from obtaining employment elsewhere in this State is guilty of a gross misdemeanor and shall be punished by a fine of not more than \$5,000.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against each culpable party an administrative penalty of not more than \$5,000 for each such violation.

3. If a fine or an administrative penalty is imposed pursuant to this section, the costs of the proceeding, including investigative



costs and attorney's fees, may be recovered by the Labor Commissioner.

4. The provisions of this section do not prohibit a person, association, company, corporation, agent or officer from negotiating, executing and enforcing an agreement with an employee of the person, association, company or corporation which, upon termination of the employment, prohibits the employee from ~~+~~

~~(a) Pursuing a similar vocation in competition with or becoming employed by a competitor of the person, association, company or corporation; or~~

~~(b) Disclosing~~ *disclosing* any trade secrets, business methods, lists of customers, secret formulas or processes or confidential information learned or obtained during the course of his or her employment with the person, association, company or corporation ~~+~~ ~~→~~ if the agreement is supported by valuable consideration and is otherwise reasonable in its scope and duration.

Sec. 3. NRS 613.330 is hereby amended to read as follows:

613.330 1. Except as otherwise provided in NRS 613.350, it is an unlawful employment practice for an employer:

(a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; ~~to~~

(b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect his or her status as an employee, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin ~~+~~; *or*

(c) Except as otherwise provided in subsection 7, to discriminate against any employee because the employee has inquired about, discussed or voluntarily disclosed his or her wages or the wages of another employee.

2. It is an unlawful employment practice for an employment agency : ~~to~~

(a) ~~Fail~~ *To fail* or refuse to refer for employment, or otherwise to discriminate against, any person because of the race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin of that person; ~~to~~

(b) ~~Classify~~ *To classify* or refer for employment any person on the basis of the race, color, religion, sex, sexual orientation, gender



identity or expression, age, disability or national origin of that person ~~H~~; or

(c) Except as otherwise provided in subsection 7, to discriminate against any person because the person has inquired about, discussed or voluntarily disclosed his or her wages or the wages of another person.

3. It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin;

(b) To limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive the person of employment opportunities, or would limit the person's employment opportunities or otherwise adversely affect the person's status as an employee or as an applicant for employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; ~~for~~

(c) Except as otherwise provided in subsection 7, to discriminate or take any other action prohibited by this section against any member thereof or any applicant for membership because the member or applicant has inquired about, discussed or voluntarily disclosed his or her wages or the wages of another member or applicant; or

(d) To cause or attempt to cause an employer to discriminate against any person in violation of this section.

4. It is an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including, without limitation, on-the-job training programs, to discriminate against any person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

5. Except as otherwise provided in subsection 6, it is an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee to discriminate against a person with a disability by interfering, directly or indirectly, with the use of an aid or appliance, including, without limitation, a service animal, by such a person.



6. It is an unlawful employment practice for an employer, directly or indirectly, to refuse to permit an employee with a disability to keep the employee's service animal with him or her at all times in his or her place of employment, except that an employer may refuse to permit an employee to keep a service animal that is a miniature horse with him or her if the employer determines that it is not reasonable to comply, using the assessment factors set forth in 28 C.F.R. § 36.302.

7. *The provisions of paragraph (c) of subsection 1, paragraph (c) of subsection 2 and paragraph (c) of subsection 3, as applicable, do not apply to any person who has access to information about the wages of other persons as part of his or her essential job functions and discloses that information to a person who does not have access to that information unless the disclosure is ordered by the Labor Commissioner or a court of competent jurisdiction.*

8. As used in this section, "service animal" has the meaning ascribed to it in NRS 426.097.

Sec. 4. This act becomes effective upon passage and approval.



