

**SENATE  
STATE OF MINNESOTA  
NINETY-THIRD SESSION**

**S.F. No. 405**

(SENATE AUTHORS: MANN, Klein, Marty, Fateh and Kunesh)

DATE  
01/19/2023

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Introduction and first reading  
Referred to Labor

OFFICIAL STATUS

1.1 A bill for an act  
1.2 relating to employment; providing that covenants not to compete are void and  
1.3 unenforceable; providing for the protection of substantive provisions of Minnesota  
1.4 law to apply to matters arising in Minnesota; proposing coding for new law in  
1.5 Minnesota Statutes, chapter 181.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [181.987] COVENANTS NOT TO COMPETE VOID IN EMPLOYMENT  
1.8 AGREEMENTS; SUBSTANTIVE PROTECTIONS OF MINNESOTA LAW APPLY.

1.9 Subdivision 1. Definitions. (a) "Covenant not to compete" means an agreement between  
1.10 an employee and employer that restricts the employee, after termination of the employment,  
1.11 from performing:

1.12 (1) work for another employer for a specified period of time;

1.13 (2) work in a specified geographical area; or

1.14 (3) work for another employer in a capacity that is similar to the employee's work for  
1.15 the employer that is party to the agreement.

1.16 (b) "Employer" means any individual, partnership, association, corporation, business  
1.17 trust, or any person or group of persons acting directly or indirectly in the interest of an  
1.18 employer in relation to an employee.

1.19 Subd. 2. Covenants not to compete void and unenforceable. (a) Subject to the exception  
1.20 in paragraph (b), any covenant not to compete contained in a contract or agreement is void  
1.21 and unenforceable.

2.1 (b) Notwithstanding paragraph (a), a covenant not to compete between an employer and  
2.2 employee is valid and enforceable if:

2.3 (1) the employee earned an annual salary from the employer at least equal to the median  
2.4 family income for a four-person family in Minnesota, as determined by the United States  
2.5 Census Bureau, for the most recent year available at the time of the employee's termination;  
2.6 and

2.7 (2) the employer agrees to pay the employee on a pro rata basis during the entirety of  
2.8 the restricted period of the covenant not to compete at least 50 percent of the employee's  
2.9 highest annualized base salary paid by the employer within the two years preceding the  
2.10 employee's separation from employment.

2.11 (c) Nothing in this subdivision shall be construed to render void or unenforceable any  
2.12 other provisions in a contract or agreement containing a void or unenforceable covenant  
2.13 not to compete.

2.14 (d) In addition to injunctive relief and any other remedies available, a court may award  
2.15 an employee who is enforcing rights under this section reasonable attorney fees.

2.16 Subd. 3. **Choice of law; venue.** (a) An employer must not require an employee who  
2.17 primarily resides and works in Minnesota, as a condition of employment, to agree to a  
2.18 provision in an agreement or contract that would do either of the following:

2.19 (1) require the employee to adjudicate outside of Minnesota a claim arising in Minnesota;  
2.20 or

2.21 (2) deprive the employee of the substantive protection of Minnesota law with respect to  
2.22 a controversy arising in Minnesota.

2.23 (b) Any provision of a contract or agreement that violates paragraph (a) is voidable at  
2.24 any time by the employee and if a provision is rendered void at the request of the employee,  
2.25 the matter shall be adjudicated in Minnesota and Minnesota law shall govern the dispute.

2.26 (c) In addition to injunctive relief and any other remedies available, a court may award  
2.27 an employee who is enforcing rights under this section reasonable attorney fees.

2.28 (d) For purposes of this section, adjudication includes litigation and arbitration.

2.29 (e) This subdivision shall not apply to a contract with an employee who is in fact  
2.30 individually represented by legal counsel in negotiating the terms of an agreement to  
2.31 designate either the venue or forum in which a controversy arising from the employment  
2.32 contract may be adjudicated or the choice of law to be applied.

3.1 Subd. 4. **Severability.** If any provision of this section is found to be unconstitutional  
3.2 and void, the remaining provisions of this section are valid.

3.3 **EFFECTIVE DATE.** This section is effective the day following final enactment and  
3.4 applies to contracts and agreements entered into on or after that date.