

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 405

| (SENATE AUTHORS: MANN, Klein, Marty, Fateh and Kunesh) | | |
|--|------|---|
| DATE | D-PG | OFFICIAL STATUS |
| 01/19/2023 | 295 | Introduction and first reading Referred to Labor |
| 02/08/2023 | 699a | Comm report: To pass as amended and re-refer to Judiciary and Public Safety |
| | 700 | Rule 12.10: report of votes in committee |
| 03/16/2023 | | Comm report: To pass as amended and re-refer to Finance |

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A bill for an act

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relating to employment; providing that covenants not to compete are void and

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unenforceable; providing for the protection of substantive provisions of Minnesota

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law to apply to matters arising in Minnesota; proposing coding for new law in

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Minnesota Statutes, chapter 181.

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

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Section 1. [181.987] COVENANTS NOT TO COMPETE VOID IN EMPLOYMENT

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AGREEMENTS; SUBSTANTIVE PROTECTIONS OF MINNESOTA LAW APPLY.

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Subdivision 1. Definitions. (a) "Covenant not to compete" means an agreement between

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an employee and employer that restricts the employee, after termination of the employment,

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from performing:

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

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(2) work in a specified geographical area; or

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(3) work for another employer in a capacity that is similar to the employee's work for

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the employer that is party to the agreement.

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A covenant not to compete does not include a nondisclosure agreement, or agreement

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designed to protect trade secrets or confidential information. A covenant not to compete

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does not include a nonsolicitation agreement, or agreement restricting the ability to use

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client or contact lists, or solicit customers of the employer.

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(b) "Employer" means any individual, partnership, association, corporation, business,

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trust, or any person or group of persons acting directly or indirectly in the interest of an

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employer in relation to an employee.

(c) "Employee" as used in this section means any individual who performs services for an employer, including independent contractors.

(d) "Independent contractor" means any individual whose employment is governed by a contract and whose compensation is not reported to the Internal Revenue Service on a W-2 form. For purposes of this section, independent contractor also includes any corporation, limited liability corporation, partnership, or other corporate entity when an employer requires an individual to form such an organization for purposes of entering into a contract for services as a condition of receiving compensation under an independent contractor agreement.

Subd. 2. **Covenants not to compete void and unenforceable.** (a) Any covenant not to compete contained in a contract or agreement is void and unenforceable.

(b) Notwithstanding paragraph (a), a covenant not to compete is valid and enforceable if:

(1) the covenant not to compete is agreed upon during the sale of a business. The person selling the business and the partners, members, or shareholders, and the buyer of the business may agree on a temporary and geographically restricted covenant not to compete that will prohibit the seller of the business from carrying on a similar business within a reasonable geographic area and for a reasonable length of time; or

(2) the covenant not to compete is agreed upon in anticipation of the dissolution of a business. The partners, members, or shareholders, upon or in anticipation of a dissolution of a partnership, limited liability company, or corporation may agree that all or any number of the parties will not carry on a similar business within a reasonable geographic area where the business has been transacted.

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

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

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

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

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

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

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

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

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

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