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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 295

01/11/2023 Authored by Elkins; Lee, K.; Bahner; Edelson; Reyer and others  
 The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy  
 02/02/2023 Adoption of Report: Re-referred to the Committee on Commerce Finance and Policy  
 03/13/2023 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

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 prevents 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) "Covenant not to compete" does not include:

- 1.17 (1) an agreement not to solicit an employer's employees;
- 1.18 (2) an agreement not to solicit or transact business with an employer's current or  
 1.19 prospective clients, customers, or vendors;
- 1.20 (3) an agreement not to interfere with an employer's vendor, supplier, or other business  
 1.21 relationships;

2.1 (4) a confidentiality or nondisclosure agreement;

2.2 (5) an agreement prohibiting use or disclosure of trade secrets or inventions;

2.3 (6) an invention assignment agreement;

2.4 (7) an agreement entered into by a person purchasing or selling the goodwill of a business  
2.5 or otherwise acquiring or disposing of an ownership interest;

2.6 (8) an agreement whereby an employee agrees to forfeit incentives or equity if they elect  
2.7 to compete with the employer; or

2.8 (9) an agreement between an employer and an employee requiring advance notice of  
2.9 termination of employment, during which notice period the employee remains employed  
2.10 by the employer and receives compensation.

2.11 (c) "Employer" means any individual, partnership, association, corporation, business  
2.12 trust, or any person or group of persons acting directly or indirectly in the interest of an  
2.13 employer in relation to an employee.

2.14 Subd. 2. **Covenants not to compete void and unenforceable.** (a) An employer may  
2.15 not require an employee to execute a covenant not to compete if, at the time such covenant  
2.16 is executed, the employee earns or is expected to earn total annual compensation equal to  
2.17 or less than the median family income for a four-person family in Minnesota, as determined  
2.18 by the United States Census Bureau, for the most recent year available.

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

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

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

2.27 (1) require the employee to adjudicate outside of Minnesota a claim arising under this  
2.28 section; or

2.29 (2) deprive the employee of the substantive protection of Minnesota law with respect to  
2.30 a controversy arising under this section.

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

3.4 (c) In addition to injunctive relief and any other remedies available, a court may award  
3.5 a prevailing plaintiff under this section reasonable attorney fees.

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

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

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

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