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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1237

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 the end of employment or
1.11 working relationship, 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 (c) "Employee" as used in this section means any individual who performs services for
1.20 an employer, including independent contractors.

1.21 (d) "Independent contractor" means any individual whose employment is governed by
1.22 a contract and whose compensation is not reported to the Internal Revenue Service on a

2.1 W-2 form. For purposes of this section, independent contractor also includes any corporation,
2.2 limited liability corporation, partnership, or other corporate entity when an employer requires
2.3 an individual to form such an organization for purposes of entering into a contract for
2.4 services as a condition of receiving compensation under an independent contractor agreement.

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

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

2.10 (c) In addition to injunctive relief and any other remedies available, a court shall award
2.11 an employee who is enforcing rights under this section reasonable attorney fees. Enforcing
2.12 rights under this section shall include defending against any action by an employer seeking
2.13 to enforce a contract provision that is found to be void and unenforceable under this section.

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

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

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

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

2.24 (c) In addition to injunctive relief and all other remedies available at law, a court shall
2.25 award an employee who is enforcing rights under this section reasonable attorney fees.

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

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

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

3.1 Subd. 5. **Retroactive application.** The legislature finds that workforce mobility is critical
3.2 to economic development and growth and the fair and just treatment of workers in all
3.3 industries within the state. There is a significant and legitimate need to encourage workforce
3.4 mobility and freedom of workers by preventing the enforcement of covenants not to compete.
3.5 The legislature therefore exercises its police power to regulate the use and enforceability
3.6 of such covenants in the interest of achieving this important public purpose. Accordingly,
3.7 this section applies to all proceedings commenced on or after the effective date, regardless
3.8 of when the cause of action arose. To this extent, this section applies retroactively, but in
3.9 all other respects it applies prospectively.

3.10 Subd. 6. **Notice and opportunity to cure.** (a) Within 180 days of the effective date for
3.11 this section, an employer may attempt to cure any agreement made void and unenforceable
3.12 by this section. This shall be known as the grace period.

3.13 (b) During the grace period, employers may provide notice to employees that a previous
3.14 agreement is now void and unenforceable. The notice must clearly state, in writing, that the
3.15 previously signed covenant not to compete is void, and inform the employee that they are
3.16 not bound by it and will not be subject to any enforcement actions if they violate it. Such
3.17 notice, provided during the grace period, shall serve as a full and complete defense against
3.18 liability in any declaratory action by an employee.

3.19 (c) During the grace period, an employer may seek to renegotiate a previously executed
3.20 covenant not to compete to conform with this section. During the grace period, evidence of
3.21 an employer's good faith effort to renegotiate a covenant not to compete may serve as a
3.22 defense against liability in any declaratory action by an employee.

3.23 (d) During the grace period, an employer may not enforce any agreement made void by
3.24 this section.

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