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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3673

02/24/2020 Authored by Mann, Elkins, Stephenson, Mahoney, Lesch and others
The bill was read for the first time and referred to the Committee on Labor

1.1 A bill for an act
1.2 relating to labor standards; prohibiting covenants not to compete; imposing
1.3 penalties; amending Minnesota Statutes 2018, section 177.27, subdivision 4;
1.4 proposing coding for new law in Minnesota Statutes, chapter 181.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
1.6 Section 1. Minnesota Statutes 2018, section 177.27, subdivision 4, is amended to read:
1.7 Subd. 4. Compliance orders. The commissioner may issue an order requiring an
1.8 employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032,
1.9 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d), 181.275,
1.10 subdivision 2a, 181.722, 181.79, and 181.939 to 181.943, and 181.99, or with any rule
1.11 promulgated under section 177.28. The commissioner shall issue an order requiring an
1.12 employer to comply with sections 177.41 to 177.435 if the violation is repeated. For purposes
1.13 of this subdivision only, a violation is repeated if at any time during the two years that
1.14 preceded the date of violation, the commissioner issued an order to the employer for violation
1.15 of sections 177.41 to 177.435 and the order is final or the commissioner and the employer
1.16 have entered into a settlement agreement that required the employer to pay back wages that
1.17 were required by sections 177.41 to 177.435. The department shall serve the order upon the
1.18 employer or the employer's authorized representative in person or by certified mail at the
1.19 employer's place of business. An employer who wishes to contest the order must file written
1.20 notice of objection to the order with the commissioner within 15 calendar days after being
1.21 served with the order. A contested case proceeding must then be held in accordance with
1.22 sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the
1.23 employer fails to file a written notice of objection with the commissioner, the order becomes
1.24 a final order of the commissioner.

2.1 Sec. 2. [181.99] COVENANTS NOT TO COMPETE PROHIBITED.

2.2 Subdivision 1. Definitions. For purposes of this section, the following terms have the
2.3 meanings given them:

2.4 (a) "Covenant not to compete" means an agreement, entered into between the employer
2.5 and an employee, that restricts or prohibits the employee from engaging in a lawful
2.6 profession, trade, or business of any kind, including but not limited to the prohibition of:

2.7 (1) any work for another employer for a specific period of time;

2.8 (2) any work in a specific geographic area; or

2.9 (3) any work for another employer that is similar to the employee's work for the employer
2.10 that is a party to the agreement.

2.11 (b) "Employee" means any individual employed by an employer and also includes
2.12 individuals classified as independent contractors.

2.13 (c) "Employer" has the meaning given in section 177.23, subdivision 6.

2.14 (d) "Franchisee" and "franchisor" have the meanings given to them in section 80C.01,
2.15 subdivisions 5 and 6.

2.16 (e) "Nonsolicitation agreement" means an agreement between an employer and employee
2.17 that prohibits solicitation by an employee, upon termination of employment, of:

2.18 (1) any employee of the employer to leave the employer; or

2.19 (2) any customer of the employer to cease or reduce the extent to which it is doing
2.20 business with the employer.

2.21 Subd. 2. Prohibition on covenants not to compete. (a) No employer shall enter into,
2.22 enforce, or threaten to enforce a covenant not to compete with any employee of the employer,
2.23 who in any workweek is engaged in commerce or in the production of goods for commerce
2.24 or is employed in an enterprise engaged in commerce or in the production of goods for
2.25 commerce. Such a covenant not to compete is void and unenforceable against the employee.

2.26 (b) An employer who employs an employee, who in any workweek is engaged in
2.27 commerce or in the production of goods for commerce or is employed in an enterprise
2.28 engaged in commerce or in the production of goods for commerce, shall post notice of the
2.29 provisions of this section in a conspicuous place on the premises of the employer.

3.1 Subd. 3. **Prohibition on franchisors.** (a) No franchisor may restrict, restrain, or prohibit
3.2 in any way a franchisee from soliciting or hiring an employee of a franchisee of the same
3.3 franchisor.

3.4 (b) No franchisor may restrict, restrain, or prohibit in any way a franchisee from soliciting
3.5 or hiring an employee of the franchisor.

3.6 (c) No franchisee may restrict, restrain, or prohibit in any way other franchisees from
3.7 soliciting or hiring an employee of a franchisee of the same franchisor.

3.8 (d) No franchisee may restrict, restrain, or prohibit in any way other franchisors from
3.9 soliciting or hiring an employee of a franchisor.

3.10 Subd. 4. **May bring action.** An employee claiming to be aggrieved by a violation of
3.11 this section may bring a civil action for damages and injunctive relief against the employer.

3.12 Subd. 5. **Judgment; damages and penalties.** (a) If the court finds that a defendant has
3.13 violated this section, the court shall enter judgment for the actual damages incurred by the
3.14 plaintiff or the appropriate penalty as provided by this subdivision, whichever is greater.
3.15 The court may also award court costs and a reasonable attorney fee.

3.16 (b) Either the court or the commissioner shall assess a \$5,000 per employee penalty if
3.17 an employer violates subdivisions 2 or 3. The ability of the commissioner to assess a penalty
3.18 under this section is in addition to the commissioner's authority in section 177.27,
3.19 subdivisions 4 and 7. Penalties assessed under this section shall be awarded to the employee
3.20 plaintiff, not to the court, commissioner, or Department of Labor and Industry.

3.21 Subd. 6. **Exceptions.** (a) Nothing in this section shall preclude an employer from entering
3.22 into an agreement with an employee to not share any information, including after the
3.23 employee is no longer employed by the employer, regarding the employer or the employment
3.24 that is a trade secret, as defined in section 325C.01, subdivision 5.

3.25 (b) Nothing in this section shall preclude an employer from entering into a nonsolicitation
3.26 agreement, confidentiality agreement, or a covenant with a person purchasing or selling the
3.27 goodwill of a business or otherwise acquiring or disposing of an ownership interest.

3.28 (c) Notwithstanding this subdivision, if an employer prevents an employee from securing
3.29 any work with another employer, that employer must continue to compensate the employee
3.30 at the rate the employee received at the end of the employee's employment with the employer.

3.31 (d) Any employment agreement preventing an employee from securing work with another
3.32 employer under this subdivision is void if the duration provided for in the employment
3.33 agreement exceeds 12 months.

4.1 Subd. 7. Choice of law. (a) An employer shall not require an employee who primarily
4.2 resides and works in Minnesota, as a condition of employment, to agree to a provision of
4.3 an employment contract that would:

4.4 (1) require an employee to adjudicate outside of Minnesota a claim arising in Minnesota;

4.5 or

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

4.8 (b) Any provision of a contract that violates paragraph (a) is voidable by the employee
4.9 at the employee's discretion.

4.10 (c) This subdivision does not apply to a contract with an employee who is individually
4.11 represented by legal counsel in negotiating the terms of an agreement to designate either
4.12 the venue or forum in which a controversy arising from the employment contract may be
4.13 adjudicated or the choice of law to be applied.

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