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March 7, 2023

House File 295 (Elkins)

Dear Chair Stephenson and House Commerce Committee Members,

The National Federation of Independent Business (NFIB) represents 10,000 small businesses in every corner of the state and is committed to advocating for the best interests of Main Street.

NFIB Minnesota opposes HF 295 in its current form because our members believe it uniquely disadvantages small businesses.

When done properly, Minnesota courts have long agreed that non-compete agreements are a valid tool for protecting legitimate employer interests. A valid non-compete must not only protect a legitimate interest, but be limited in duration, scope of activity and geographic area. And agreements signed post-employment must be accompanied by additional compensation.

Even a proponent of noncompete restrictions wrote in the Star Tribune, “Minnesota has a well-developed body of case law in this area that is fair to both sides.”

Small Business Disadvantage. The bill invalidates noncompete agreements unless an employer can pay to enforce them. This puts smaller businesses at a distinct disadvantage despite having the same interests to protect as larger, better funded competitors.

As a result, many big businesses will continue using non-competes to protect sensitive information, product development and worker training. Most small businesses will not.

Effect On Existing Caselaw. The bill is silent on existing noncompete caselaw, leading to confusion about whether viability standards and regulations developed in state courts over many years are still valid for agreements that remain enforceable under the new law.

Effect On Other Agreements. The definition of “covenant not to compete” could impact other types of agreements intended to protect small employers from competitive harm.

Other states’ regulations explicitly exclude nonsolicitation, confidentiality and trade-secret agreements. For instance, Maryland’s noncompete law does not apply to an agreement that limits “the taking or use of a client list or other proprietary client-related information.”

Thank you for considering the small business perspective. We look forward to working with lawmakers to make this proposal fairer for small employers.

Sincerely,

A handwritten signature in black ink, appearing to read 'JL Reynolds', with a stylized flourish at the end.

John L. Reynolds
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