

168.20

ARTICLE 12

168.21

REGULATION OF RESTRICTIVE EMPLOYMENT AGREEMENTS

168.22 Section 1. **[181.141] SEXUAL HARASSMENT OR ABUSE SETTLEMENT;**

168.23 **PAYMENT AS SEVERANCE OR WAGES PROHIBITED.**

168.24 In a sexual harassment or abuse settlement between an employer and an employee, when
168.25 there is a financial settlement provided, the financial settlement cannot be provided as wages
168.26 or severance pay to the employee regardless of whether the settlement includes a
168.27 nondisclosure agreement.

168.28 **EFFECTIVE DATE.** This section is effective the day following final enactment and
168.29 applies to settlements entered into on or after that date.

169.1 Sec. 2. **[181.987] COVENANTS NOT TO COMPETE VOID IN EMPLOYMENT**
169.2 **AGREEMENTS; SUBSTANTIVE PROTECTIONS OF MINNESOTA LAW APPLY.**

169.3 Subdivision 1. Definitions. (a) "Covenant not to compete" means an agreement between
169.4 an employee and employer that restricts the employee, after termination of the employment,
169.5 from performing:

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

169.7 (2) work in a specified geographical area; or

169.8 (3) work for another employer in a capacity that is similar to the employee's work for
169.9 the employer that is party to the agreement.

169.10 A covenant not to compete does not include a nondisclosure agreement, or agreement
169.11 designed to protect trade secrets or confidential information. A covenant not to compete
169.12 does not include a nonsolicitation agreement, or agreement restricting the ability to use
169.13 client or contact lists, or solicit customers of the employer.

169.14 (b) "Employer" means any individual, partnership, association, corporation, business,
169.15 trust, or any person or group of persons acting directly or indirectly in the interest of an
169.16 employer in relation to an employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

170.26 (e) This subdivision applies only to claims arising under this section.

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