

Minnesota set to ban Noncompete Agreements on July 1st - What Companies Need to Know (and do)

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Authors: [J. Scott Humphrey](#)

In a lightning-fast move, the Minnesota Legislature just passed a bill that voids all future covenants not to compete, with limited exceptions for agreements entered into in connection with the sale or dissolution of a business. A copy of the bill, omnibus bill SF 3025, can be found [here](#). The bill now sits on Governor Tim Walz's desk and we expect Governor Walz to sign the bill shortly. Once he does, the bill becomes law on July 1, 2023.

The bill prohibits any noncompetition agreement with any employee or independent contractor. It does, however, contain carveouts for the sale or dissolution of a business so long as the noncompete is "reasonable." The insertion of "reasonable" into the sale/dissolution of a business exemption is significant and signals that companies should be prepared to analyze and evaluate noncompete restrictions involving the sale or dissolution of a business through the same lens that they evaluated employee noncompete agreements before the ban. Put more succinctly, companies should not expect the same level of flexibility and deference Minnesota courts previously provided when enforcing noncompete agreements that arose out of the sale or dissolution of a business.

Outside of the sale/dissolution of a business exception, the bill provides that any "covenant not to compete contained in a contract is void and unenforceable." The bill defines a "covenant not to compete" as an agreement between an employer and an employee "that restricts the employee, after termination of the employment, from performing:

- work for another employer for a specified period of time;
- work in a specified geographic area; or
- work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement."

Importantly, a "covenant not to compete" does **not** include nondisclosure, confidentiality, trade secret, or non-solicitation agreements and, unlike some other state statutes and the proposed FTC rule banning noncompete agreements, specifically notes that restrictions concerning the ability to use client contact lists and/or solicit customers are still enforceable in Minnesota. The bill is also not retroactive but, following a trend that we are seeing in other state legislatures, does prohibit employers from requiring Minnesota residents to litigate claims outside of Minnesota and/or be subject to another state's law with respect to a controversy arising in Minnesota. Importantly, this ban on foreign choice of law and forum provisions applies to all forms of employment agreements, not just noncompete agreements.

Since the law is scheduled to take effect on **July 1, 2023**, Minnesota employers and companies with employees in Minnesota should immediately review their agreements in order to ensure that their agreements will be in compliance with Minnesota law on and after July 1st. Compliance is important because, in addition to noncompete agreements being unenforceable after July 1st, a court may award an employee his/her attorneys' fees if s/he seeks to void a noncompete agreement that does not comply with Minnesota law. The attorneys of Benesch's Trade Secret, Restrictive Covenant and Unfair Competition Group will continue to monitor this bill and can help companies navigate compliance with the bill once it becomes law on July 1st. Hence, please reach out to Scott Humphrey or any member of the Group for assistance.

Scott Humphrey at shumphrey@beneschlaw.com or 312.624.6420.