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# MINNESOTA'S NEW NON- COMPETE BAN

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# PRESENTER

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# MN FOLLOWS THE LEAD OF OTHER STATES

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California, North Dakota, and Oklahoma ban non-competes.

Other states, including **Colorado**, DC, **Illinois**, Maine, **Maryland**, Massachusetts, **New Hampshire**, Nevada, **Oregon**, Rhode Island, **Virginia**, and Washington place limits on which employees an employer may enter into a non-compete with based on salary, exempt status, or other factors.

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# EFFECTIVE DATE

July 1<sup>st</sup>, 2023



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# RETROACTIVE?

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No. Existing agreements may be upheld assuming they are reasonable in its restrictions, including as to the prohibited activity, duration, and geographic scope.



The ban only applies to agreements entered *on or after* July 1, 2023



# WHAT EXACTLY IS BANNED?

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The ban applies to any agreement that would “restrict the employee, after termination of the employment, from performing (1) work for another employer for a specified period of time; (2) work in a specified geographical area; or (3) work for another employer in a capacity that is similar to the employee’s work for the employer that is a party to the agreement.”

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# WHAT EXACTLY IS BANNED?

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Employers should review other documents to ensure they do not contain prohibited non-compete provisions, including:

- Employment Agreements
- Consulting Agreements
- Non-Disclosure Agreements
- Confidentiality Agreements
- Severance Agreements
- Buy-Sell Agreements
- Stock Award Agreements
- Long-Term Incentive Plan Documents
- Employee Handbooks



# WHAT EXACTLY IS BANNED?

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**THIS BAN APPLIES TO AGREEMENTS WITH EMPLOYEES AND INDEPENDENT CONTRACTORS.**



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# ARE NON-COMPETES COMPLETELY GONE IN MN?

## Not quite.

The law still permits non-compete provisions in the context of the sale of a business or dissolution of a business so long as the provision was agreed to by key individuals involved in selling or dissolving the business, limits the restriction to a similar type of business, and remains within a reasonable geographic area for a reasonable length of time.



# CHOICE-OF-LAW/CHOICE-OF-VENUE

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- Employers cannot name another, less-restrictive state in their choice-of-law provisions to end-around this ban.
- Employers also cannot require an employee who primarily resides and works in Minnesota to litigate any claims arising from an agreement in a venue other than Minnesota.



# REMEDIES FOR VIOLATIONS OF THE LAW

If an employee or independent contractor sues a company for violating this law, they will be entitled to recover their reasonable attorney's fees.



  
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# IS THERE A SILVER LINING?

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## Yes! It could have been worse

Early versions of the law included a ban on non-solicitation and non-disclosure provisions. An earlier version also would have prohibited non-Minnesota choice-of-law or choice-of-venue provisions in *any* agreement between an employer and a Minnesota employee or independent contractor.



# IS THERE A SILVER LINING?



Courts will be allowed to sever an unenforceable non-compete provision from the remainder of the agreement without making the entire agreement unenforceable. The bill makes clear that the balance of an otherwise enforceable agreement will remain unaffected.

# NOW WHAT?

Non-disclosure and non-solicitation agreements are still allowed, though should be reviewed to ensure they are not effectively, non-competes in sheep's clothing

Ensure your NDA/non-solicitation agreements are carefully drafted to ensure you are protecting all your business interests



# NOW WHAT?

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Carefully draft “blue pencil” provisions that will allow a reviewing court to modify any overbroad restrictive covenants to make them enforceable.



Consider a forfeiture arrangement - offer benefits in exchange for an employee voluntarily limiting competitive activities



Consider limiting employee access to the company's most important trade secret information



# QUESTIONS?



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