

MINNESOTA
 NELA
Advocates For Employee Rights

March 10, 2025

VIA ELECTRONIC MAIL

Minnesota House of Representatives
Workforce, Labor, and Economic Development Finance and Policy Committee
568 State Official Building
St. Paul, MN 55155

***Re: Minnesota House Workforce, Labor, and Economic Development
Finance and Policy Committee: Letter in Opposition to HF 1768***

Dear Committee:

The Minnesota Chapter of the National Employment Lawyers' Association (MN-NELA) represents and advocates on behalf of workers across the State of Minnesota. In our practices, we represent workers in all manner of employment disputes. They, and thus we, have a significant and intensely personal interest in all legislation related to workers' rights. We write regarding HF 1768. We appreciate the opportunity to offer our reasons for opposing this proposed bill.

As a general matter, it has long been established beyond any serious dispute that restrictive covenants, and non-compete agreements in particular, hurt workers and harm competition. Indeed, as the Federal Trade Commission noted in recently proposing a rule to ban non-compete clauses, such agreements afford employers "the power to suppress wages" and also "reduce the wages of workers who aren't subject to noncompetes by preventing jobs from opening in their industry."¹ Moreover, existing evidence confirms that restrictive covenants decrease competition, contribute to racial and gender wage gaps, hinder innovation, stifle entrepreneurship, curtail economic liberty, and worsen working conditions.²

Take an example of a person I represented prior to the 2023 law banning noncompetition agreements. He worked in director level role in finance, earning over \$500,000 in total

¹ www.ftc.gov/system/files/ftc_gov/pdf/noncompete_nprm_fact_sheet.pdf

² *Id.*

compensation. He was great at his job by all accounts, but was told by leadership that he would not be promoted for several years to a Vice President level job because they did not have an opening. He received a job offer from a competitor to be a Vice President. The competitive offer was approximately \$200,000 more with earning capacity that would increase based on his performance. It was exactly what he wanted: a rewarding job in his field allowing him to earn more for his family. It was exactly what the prospective employer wanted: top talent to improve the company for which it was willing to pay.

I was hired to look over the paperwork, and I had to inform him that he could not accept the better job because it violated your noncompetition agreement. That meant he needed to stay in the lower paying job despite having a much better offer to work elsewhere for no reason other than the noncompetition agreement. The State of Minnesota banned him, by law, from taking his talents and earning more income for a company that wanted to pay him more. This is bad policy. It is bad for the economy. It is bad for the free market. It is bad for morale. It has many downsides and no upsides. The legislature made the right call when it banned non-compete agreements in 2023.

With that general backdrop, there are several strong reasons why HF 1768 is bad for Minnesota. First, the proposed amendments to Minnesota's ban on noncompetition agreements claims to be a solution—though the problem it claims to solve does not exist. Opponents to noncompetition agreements frequently claim that such agreements help prevent widespread theft of proprietary trade secrets. But this claim lacks actual evidence. There is simply no evidence that a ban on noncompetition agreements leads to an increase in trade secret theft.

On the contrary, Minnesota has strong and effective laws prohibiting trade secret theft. Federal law does as well. If an employee steals a company's property (intellectual or otherwise), the company has ample ability to pursue remedies for the theft. This is not an uncommon tool used by employers. The FTC debunking the argument that banning noncompete agreements leads to increased trade secret violations in its rulemaking process. If, as proponents of this bill suggest, trade secret laws are flawed, then the solution is to revise trade secret laws, not enact overly restrictive and unrelated laws banning fair competition.

This raises a second problem with HF 1768. Even if there were a problem with trade secret theft, noncompetition agreements are not a proper solution. Proponents of noncompetition agreements argue that because some employees *might* steal trade secrets, all employees should be banned from leaving their employer to work for another company for a year (or some other restricted time frame). But it is not difficult to see the profound flaw in this argument. It is like banning the driving of cars because some drivers *might* speed. The limit on a person's ability to earn a living, to develop a trade or profession, and to work to earn more even if that means leaving for a competitor willing to offer more compensation, are all bedrock elements of our free, private markets. They

are cornerstone pieces of what it means to be Minnesotan. They should not be trampled without very strong reasons that are utterly lacking in HF 1768.

This is the third point. HF 1768's proposed limits on job category and income are as arbitrary as they are problematic. The bill proposes an income limit of \$120,000 for workers in research and development (whatever that means, and lawyers will earn millions litigating those definitions), and \$500,000 for all workers. But why? Why should a worker who earns \$499,000 not be subject to a noncompete agreement, but one who earns \$501,000 can be? The fact that a worker earns \$500,000, or \$120,000, should not mean that an employer can then ban them from leaving to take a more lucrative job offer elsewhere, or to take the initiative to start their own business. Recall the example above of the finance director and would-be Vice President who earned more than \$500,000. There is no sound policy reason to prevent him from earning a better living any more than there is to prevent someone earning half as much as him.

One of the virtues of the 2023 ban on non-competes is that it left little doubt about the status of proposed non-compete agreements. In almost every case, they are invalid, which gives both employees and employers the certainty they need to make decisions without weighing the risk of potential litigation. Adding arbitrary financial thresholds and undefined job descriptions to the law banning non-competes will invite legal wrangling and chicanery. This serves only to incentivize costly and inefficient legal battles, create uncertainty in the job market, and stifle the individual ambition and entrepreneurship that drive our economy.

Finally, noncompetition agreements foster and increase discrimination, harassment, and retaliation. As illustrated above, such agreements allow companies to stifle worker pay and prohibit workers from competing in the open market. This has an especially harmful effect on women, who historically are paid less than men for doing the same work. And this is particularly problematic in science and technology fields. For example, a 2023 Pew Research Center study found that women in STEM earn about 84 cents for every dollar earned by men in similar roles.³ By creating artificial barriers to job market mobility, noncompetition agreements further perpetuate the gender pay gap, especially in STEM jobs, which HF 1768 specifically targets.

Even worse, noncompetition agreements can make it very difficult and financially disastrous to quit or move jobs. This is especially problematic for workers experiencing sexual harassment, or other forms of illegal discrimination, retaliation, and hostility. Minnesota NELA members consistently see Minnesotans who want to leave their jobs due to illegal discrimination, harassment, or retaliation but who fear being unemployed for 12 months or longer as a result of a noncompetition agreement.

³ <https://www.pewresearch.org/social-trends/2023/03/01/the-enduring-grip-of-the-gender-pay-gap/>

Minnesota's non-compete ban is not in need of drastic fixes like HF 1768. We respectfully ask that you vote no on this bill.

Best regards,

/s/ Brian T. Rochel
Brian T. Rochel, Member
Legislative Committee
Minnesota Chapter of NELA