

1.1 CONFERENCE COMMITTEE REPORT ON S.F. No. 3035

1.2 A bill for an act

1.3 relating to state government; establishing the biennial budget for the Department
1.4 of Employment and Economic Development, Explore Minnesota, Department of
1.5 Labor and Industry, Workers' Compensation Court of Appeals, and Bureau of
1.6 Mediation Services; modifying miscellaneous policy provisions; requiring reports;
1.7 appropriating money; amending Minnesota Statutes 2022, sections 15.71, by adding
1.8 subdivisions; 15.72, by adding a subdivision; 116J.5492, subdivisions 8, 10;
1.9 116J.55, subdivisions 1, 5, 6; 116J.871, subdivision 2; 116J.8748, subdivisions 3,
1.10 4, 6, by adding a subdivision; 116L.361, subdivision 7; 116L.362, subdivision 1;
1.11 116L.364, subdivision 3; 116L.56, subdivision 2; 116L.561, subdivision 5;
1.12 116L.562, subdivision 2; 116U.05; 116U.10; 116U.15; 116U.20; 116U.30;
1.13 116U.35; 175.16, subdivision 1; 177.26, subdivisions 1, 2; 177.27, subdivisions
1.14 4, 7; 178.01; 178.011, subdivision 7; 178.03, subdivision 1; 178.11; 179.86,
1.15 subdivisions 1, 3, by adding subdivisions; 181.14, subdivision 1; 181.635,
1.16 subdivisions 1, 2, 3, 4, 6; 181.85, subdivisions 2, 4; 181.86, subdivision 1; 181.87,
1.17 subdivisions 2, 3, 7; 181.88; 181.89, subdivision 2, by adding a subdivision;
1.18 181.9435, subdivision 1; 181.9436; 182.654, subdivision 11; 182.666, subdivisions
1.19 1, 2, 3, 4, 5, by adding a subdivision; 326B.092, subdivision 6; 326B.096;
1.20 326B.103, subdivision 13, by adding subdivisions; 326B.106, subdivisions 1, 4,
1.21 by adding a subdivision; 326B.802, subdivision 15; 337.01, subdivision 3; 337.05,
1.22 subdivision 1; 341.21, subdivisions 2a, 2b, 2c, 4f, 7, by adding a subdivision;
1.23 341.221; 341.25; 341.27; 341.28, subdivisions 2, 3, by adding subdivisions; 341.30,
1.24 subdivision 4; 341.32, subdivision 2; 341.321; 341.33; 341.355; 469.40, subdivision
1.25 11; 469.47, subdivisions 1, 5, 6; Laws 2021, First Special Session chapter 10,
1.26 article 2, section 24; proposing coding for new law in Minnesota Statutes, chapters
1.27 116J; 116L; 116U; 179; 181; 182; 341; repealing Minnesota Statutes 2022, section
1.28 177.26, subdivision 3.

1.29 May 12, 2023

1.30 The Honorable Bobby Joe Champion
1.31 President of the Senate

1.32 The Honorable Melissa Hortman
1.33 Speaker of the House of Representatives

1.34 We, the undersigned conferees for S.F. No. 3035 report that we have agreed upon the
1.35 items in dispute and recommend as follows:

1.36 That the House recede from its amendments and that S.F. No. 3035 be further amended
1.37 as follows:

66.1 Additionally, an administrative law judge may order, in addition to the relief found in
66.2 section 182.669:

66.3 (1) reinstatement of the worker to the same position held before any adverse personnel
66.4 action or to an equivalent position; reinstatement of full fringe benefits and seniority rights;
66.5 compensation for unpaid wages, benefits, and other remuneration; or front pay in lieu of
66.6 reinstatement; and

66.7 (2) compensatory damages payable to the aggrieved worker equal to the greater of \$5,000
66.8 or twice the actual damages, including unpaid wages, benefits, and other remuneration and
66.9 punitive damages.

66.10 **ARTICLE 6**

66.11 **COVENANTS NOT TO COMPETE**

66.12 Section 1. **[181.988] COVENANTS NOT TO COMPETE VOID IN EMPLOYMENT**
66.13 **AGREEMENTS; SUBSTANTIVE PROTECTIONS OF MINNESOTA LAW APPLY.**

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

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

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

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

66.21 A covenant not to compete does not include a nondisclosure agreement, or agreement
66.22 designed to protect trade secrets or confidential information. A covenant not to compete
66.23 does not include a nonsolicitation agreement, or agreement restricting the ability to use
66.24 client or contact lists, or solicit customers of the employer.

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

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

66.30 (d) "Independent contractor" means any individual whose employment is governed by
66.31 a contract and whose compensation is not reported to the Internal Revenue Service on a

67.1 W-2 form. For purposes of this section, independent contractor also includes any corporation,
67.2 limited liability corporation, partnership, or other corporate entity when an employer requires
67.3 an individual to form such an organization for purposes of entering into a contract for
67.4 services as a condition of receiving compensation under an independent contractor agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

68.5 **EFFECTIVE DATE.** This section is effective July 1, 2023, and applies to contracts
68.6 and agreements entered into on or after that date.

68.7 **ARTICLE 7**

68.8 **BUILDING AND CONSTRUCTION CONTRACTS**

68.9 Section 1. Minnesota Statutes 2022, section 15.71, is amended by adding a subdivision
68.10 to read:

68.11 Subd. 1a. **Indemnification agreement.** "Indemnification agreement" means an agreement
68.12 by the promisor to indemnify, defend, or hold harmless the promisee against liability or
68.13 claims of liability for damages arising out of bodily injury to persons or out of physical
68.14 damage to tangible or real property.

68.15 Sec. 2. Minnesota Statutes 2022, section 15.71, is amended by adding a subdivision to
68.16 read:

68.17 Subd. 1b. **Promisee.** "Promisee" includes that party's independent contractors, agents,
68.18 employees, or indemnitees.

68.19 Sec. 3. Minnesota Statutes 2022, section 15.72, is amended by adding a subdivision to
68.20 read:

68.21 Subd. 3. **Unenforceability of certain agreements.** (a) An indemnification agreement
68.22 contained in, or executed in connection with, a contract for a public improvement is
68.23 unenforceable except to the extent that:

68.24 (1) the underlying injury or damage is attributable to the negligent or otherwise wrongful
68.25 act or omission, including breach of a specific contractual duty, of the promisor or the
68.26 promisor's independent contractors, agents, employees, or delegates; or

68.27 (2) an owner, a responsible party, or a governmental entity agrees to indemnify a
68.28 contractor directly or through another contractor with respect to strict liability under
68.29 environmental laws.