

FIRST REGULAR SESSION

SENATE BILL NO. 381

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLARICH.

Read 1st time January 29, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1607S.021

AN ACT

To amend chapter 431, RSMo, by adding thereto one new section relating to contracts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 431, RSMo, is amended by adding thereto one new section, to be known as section 431.202, to read as follows:

431.202. 1. A reasonable covenant in writing promising not to solicit, recruit, hire or otherwise interfere with the employment of one or more employees shall be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031, RSMo, if:

(1) Between two or more corporations or other business entities seeking to preserve workforce stability (which shall be deemed to be among the protectable interests of each corporation or business entity) during, and for a reasonable period following, negotiations between such corporations or entities for the acquisition of all or a part of one or more of such corporations or entities;

(2) Between two or more corporations or business entities engaged in a joint venture or other legally permissible business arrangement where such covenant seeks to protect against possible misuse of confidential or trade secret business information shared or to be shared between or among such corporations or entities;

(3) Between an employer and one or more employees seeking on the part of the employer to protect:

(a) Confidential or trade secret business information; or

(b) Customer or supplier relationships, goodwill or loyalty, which shall be deemed to be among the protectable interests of the employer; or (4) Between an employer and one or more employees, notwithstanding the absence of the

protectable interests described in subdivision (3) of this subsection, so long as such covenant does not continue for more than one year following the employee's employment.

2. Whether a covenant covered by this section is reasonable shall be determined based upon the facts and circumstances pertaining to such covenant, but a covenant covered exclusively by subdivision (3) or (4) of subsection 1 of this section shall be conclusively presumed to be reasonable if its post-employment duration is no more than one year.

3. Nothing in this section shall preclude a covenant described in subsection 1 of this section from being enforceable in circumstances other than those described in subdivisions (1) to (4) of subsection 1 of this section, where such covenant is reasonably necessary to protect a party's legally permissible business interests.

4. This section shall have retrospective as well as prospective effect.

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