

1.1 Senator ..... moves to amend S.F. No. 405 as follows:

1.2 Page 1, delete lines 16 to 18 and insert:

1.3 "A covenant not to compete does not include a nondisclosure agreement, or agreement  
1.4 designed to protect trade secrets or confidential information.

1.5 A covenant not to compete does not include a nonsolicitation agreement, or agreement  
1.6 restricting the ability to use client or contact lists, or solicit customers of the employer.

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

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

1.12 (d) "Independent contractor" means any individual whose employment is governed by  
1.13 a contract and whose compensation is not reported to the Internal Revenue Service on a  
1.14 W-2 form. For purposes of this section, independent contractor also includes any corporation,  
1.15 limited liability corporation, partnership, or other corporate entity when an employer requires  
1.16 an individual to form such an organization for purposes of entering into a contract for  
1.17 services as a condition of receiving compensation under an independent contractor  
1.18 agreement."

1.19 Page 1, after line 20, insert:

1.20 "(b) Notwithstanding paragraph (a), a covenant not to compete is valid and enforceable  
1.21 if:

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

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

1.32 Page 2, line 1, delete "(b)" and insert "(c)"

2.1 Page 2, line 4, delete "(c)" and insert "(d)"