

FIRST REGULAR SESSION

# HOUSE BILL NO. 479

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FREDERICK.

1188H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 431.202, RSMo, and to enact in lieu thereof two new sections relating to covenants not to compete.

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

Section A. Section 431.202, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 431.202 and 431.203, to read as follows: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 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; **or**

(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~~

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 ~~—— (4) Between an employer and one or more employees, notwithstanding the absence of~~  
19 ~~the protectable interests described in subdivision (3) of this subsection, so long as such covenant~~  
20 ~~does not continue for more than one year following the employee's employment; provided,~~  
21 ~~however, that this subdivision shall not apply to covenants signed by employees who provide~~  
22 ~~only secretarial or clerical services].~~

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

27 ~~—— 3. Nothing in subdivision (3) or (4) of subsection 1 of this section is intended to create,~~  
28 ~~or to affect the validity or enforceability of, employer-employee covenants not to compete.—~~

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

33 ~~[5-] 3. Nothing [is] in this section shall be construed to limit an employee's ability to~~  
34 ~~seek or accept employment with another employer immediately upon, or at any time subsequent~~  
35 ~~to, termination of employment, whether said termination was voluntary or nonvoluntary.~~

36 ~~[6-] 4. This section shall have retrospective as well as prospective effect.~~

**431.203. 1. For purposes of this section, "covenant not to compete" means an**  
2 **agreement or part of a contract of employment in which the covenantee agrees to refrain**  
3 **from competition with the covenantor, for a specific period of time and within a particular**  
4 **geographic area, following the termination of the business or employment relationship**  
5 **between the covenantee and covenantor.**

6 **2. Except as provided under section 431.202, no covenant not to compete entered**  
7 **into on or after August 28, 2017, shall be enforceable.**

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