

1 EMPLOYEE OR INDEPENDENT CONTRACTOR IS CONSIDERED UNIQUE IF AND ONLY IF
2 HE OR SHE POSSESSES TRADE SECRETS OF THE BUSINESS OR CONFIDENTIAL MATE-
3 RIAL THAT IS AKIN TO A TRADE SECRET.

4 (B) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR HAS PURCHASED OR SOLD ANY
5 PORTION OF THE BUSINESS. SUCH EMPLOYEES ARE DEEMED TO HAVE LEFT THE
6 BUSINESS VOLUNTARILY.

7 (C) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS A LEARNED PROFESSIONAL.
8 PROVIDED, HOWEVER, THAT COVENANTS INVOLVING LEARNED PROFESSIONALS ARE
9 NOT ENFORCEABLE IF SUCH LEARNED PROFESSIONAL WAS INVOLUNTARILY TERMI-
10 NATED OR DISCHARGED FOR REASONS OTHER THAN MISCONDUCT.

11 (D) SUCH EMPLOYEE OR INDEPENDENT CONTRACTOR IS AN ATTORNEY.

12 S 952. EXCEPTIONS. SUCH RESTRICTIVE COVENANT MAY STILL BE ENFORCED IF
13 THE EMPLOYER DEMONSTRATES THAT (1) THE EMPLOYEE LEFT ITS BUSINESS VOLUN-
14 TARILY OR WAS TERMINATED OR DISCHARGED FOR MISCONDUCT; AND (2) THERE ARE
15 UNUSUAL CIRCUMSTANCES UNIQUE TO THE BUSINESS AND TO THE EMPLOYEE
16 INVOLVED SUCH THAT THE EMPLOYER HAS A COMPELLING INTEREST THAT OUTWEIGHS
17 THE EMPLOYEE OR INDEPENDENT CONTRACTOR'S INTEREST IN BEING ABLE TO
18 PURSUE HIS OR HER LIVELIHOOD AND THE PUBLIC INTEREST IN FREE AND OPEN
19 COMPETITION; AND (3) SUCH RESTRICTIVE COVENANTS SHALL BE ENFORCED ONLY
20 TO THE EXTENT NECESSARY TO PROTECT THE EMPLOYER'S COMPELLING INTEREST.

21 S 2. This act shall take effect immediately.