

## EMPLOYEE NONCOMPETE AGREEMENTS

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<http://www.house.mi.gov/hfa>

**House Bill 4874 (proposed substitute H-1)**  
**Sponsor: Rep. Mari Manoogian**  
**Committee: Commerce and Tourism**  
**Complete to 1-15-20**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4874 would amend the Michigan Antitrust Reform Act to prohibit employee noncompete agreements under certain circumstances.

Generally speaking, a noncompete agreement is a contract under which an employee agrees not to compete with his or her employer by going into a similar profession or trade after he or she no longer works for that employer.

Under current law, an employer can obtain an agreement from an employee that protects its reasonable competitive business interests and expressly prohibits the employee from engaging in employment or a line of business after termination of employment as long as the agreement is reasonable in its duration, in its geographical area, and in the type of employment or line of business it involves. The bill would retain this provision.

#### Notice and Disclosure

The bill would add, however, that an employer could not obtain such a noncompete agreement unless the employer had done all of the following:

- Provided applicants for the position with written notice of the noncompete agreement requirement.
- Disclosed the terms of the noncompete agreement in writing before hiring the employee.
- Posted the act or a summary of its requirements in a conspicuous place at the worksite where it is accessible to employees.

#### Low-Wage Employees

The bill would also prohibit an employer from requesting or obtaining a noncompete agreement from an employee or applicant for employment who is, or who would be hired as, a *low-wage employee*. An employer who violated this prohibition would be responsible for a civil violation and fined up to \$5,000 for each employee who was a subject of the violation. The fine proceeds would be deposited in the state treasury.

*Low-wage employee* would mean either of the following:

- A minor.
- An employee, as defined in section 203 of the federal Fair Labor Standards Act,<sup>1</sup> who receives annual wages from the employer (excluding overtime) at a rate less

<sup>1</sup> <https://www.govinfo.gov/content/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap8-sec203.pdf>

than 138% of the last published federal poverty line for a family of three.<sup>2</sup> The bill would require the Department of Labor and Economic Opportunity (DLEO) to keep this rate posted on its public website.

#### Unenforceability and Remedies

Under the bill, all of the following would be void and unenforceable:

- A noncompete agreement obtained in violation of the above provisions.
- A term in a noncompete agreement that purports to waive requirements of this section.
- A choice of law provision in a contract, to the extent that it would negate the requirements of the bill.

In an action to enforce or to void or limit enforcement of a noncompete agreement, the employer would bear the burden of establishing that the employee was not a low-wage employee and that the duration, geographical area, and type of employment or line of business were reasonable. The court could void or limit an unreasonable agreement. If the court did so, it would have to award both of the following:

- To the employee and any other injured party: the actual costs of the action that were necessary to defend against enforcement of the noncompete agreement or to void or limit the agreement, such as reasonable attorney fees.
- To the employee: all income lost as a result of actual or threatened enforcement of the agreement or terms that were voided or limited.

The bill would take effect 90 days after being enacted.

MCL 445.774a

#### **FISCAL IMPACT:**

House Bill 4874 would have an indeterminate fiscal impact on the state and on local units of government. Revenue to the state would be increased, depending on the number of employers held responsible for civil violations and the amount of fines ordered to be paid. Under the bill, revenue from fines would be required to be deposited in the state treasury. Any fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. The bill would also increase administrative costs for DLEO by an unknown, but likely negligible, amount. It is assumed that DLEO would absorb any new costs under current appropriation levels.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>2</sup> Using the 2019 federal poverty guidelines, these annual wages would be \$29,435.40. The 2020 poverty guidelines will be published between January 20 and January 24, 2020. See <https://aspe.hhs.gov/poverty-guidelines>