

## RULES FOR THE USE OF NONCOMPETE AGREEMENTS IN EMPLOYMENT

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**House Bill 4874 as introduced**  
**Sponsor: Rep. Mari Manoogian**  
**Committee: Commerce and Tourism**  
**Complete to 12-11-19**

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

### SUMMARY:

House Bill 4874 would amend the Michigan Antitrust Reform Act to modify the terms under which an employer could require employees to sign a noncompete agreement, in which an employee agrees not to enter or start a profession or trade in competition with the employer's firm. The bill would apply to noncompete agreements entered into after the bill's effective date.

#### Required Notice of Noncompete Agreements

Under the bill, as under current law, employers could obtain noncompete agreements from their employees to protect their reasonable competitive business interests and expressly prohibit employees from engaging in employment or a line of business after termination of employment if the agreement was reasonable as to its duration, geographical area, and the type of employment or line of business.

#### Disclosure of Noncompete Agreements

Under the bill, however, an employer could not obtain such a noncompete agreement from an employee 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.

#### Prohibition of Low-Wage Employee Noncompete Agreements

In addition, the bill would prohibit employers from requesting or obtaining noncompete agreements from *low-wage employees*.

A *low-wage employee* would mean one who received compensation from the employer, excluding overtime, at a rate less than the greater of any of the following:

- \$15 an hour.
- 150% of the minimum hourly wage established under section 4 of the Improved Workforce Opportunity Act.
- Annual compensation of \$31,200, adjusted for inflation annually by the state treasurer based on the most comprehensive index of consumer prices available for the Detroit area from the U.S. Department of Labor, Bureau of Labor Statistics, and rounded to the nearest 5 cents.

### Voided Noncompete Agreements

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

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

### Enforcement

The bill would allow the attorney general to bring legal action in a court of competent jurisdiction to enforce the prohibition of noncompete agreements for low-wage employees. An employer who violated the provision would be responsible for a civil violation and would have to be 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.

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 Department of Attorney General would potentially incur costs related to enforcing restrictions of noncompete agreements with low-wage employees. Costs would be dependent on whether the department chooses to bring any legal actions as described in the bill and how often it does so. These costs would be supported by the department's ongoing annual appropriations.

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