

EMPLOYEE NONCOMPETE AGREEMENTS

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House Bill 4399 (H-2) as reported from committee

Sponsor: Rep. Denise Mentzer

Committee: Labor

Complete to 12-11-24

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

SUMMARY:

House Bill 4399 would amend section 4a of 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 their employer by going into a similar profession or trade after they no longer work 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 delete this provision.

Instead, House Bill 4399 would generally prohibit a business from entering into or attempting to enter into a *noncompete agreement* with a *worker*, obtaining or attempting to obtain a noncompete agreement from a worker, enforcing or attempting to enforce a noncompete agreement against a worker or former worker, or representing that a noncompete agreement applies to a worker or former worker unless both of the following conditions are met:

- The worker is an owner of the business who is selling the business or their full or partial ownership interest, or the worker is responsible for the sale of all or substantially all of the business's operating assets.
- The noncompete agreement protects only the business's reasonable competitive business interests, has a reasonable duration, restricts competition only in the relevant market, and restricts competition only to the same type of trade or commerce.

Noncompete agreement would mean an agreement between a business and a worker that prohibits the worker from, penalizes the worker for, or functions to prevent the worker from seeking or accepting work with a different business or operating a business after the worker's work with the business ends.

Worker would mean an employee, independent contractor, extern, intern, volunteer, or apprentice.

However, an agreement that prohibits a worker from soliciting work from another business would be enforceable if the worker provides work for the business, the business pays the worker at an annual rate that is above 200% of the last published federal poverty line for a family of three,¹ and the agreement expires within one year after the worker's last day of work with the business.

¹ Using the 2024 federal poverty guidelines, these annual wages would be \$51,640.00.

The bill also would not limit the enforceability of an agreement that prohibits a worker from disclosing confidential information or trade secrets.

Unenforceability and remedies

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

- A noncompete agreement that violates the above provisions or that is obtained or entered into in violation of those provisions.
- A term in a noncompete agreement that purports to waive requirements of section 4a (i.e., the bill), requires a worker to adjudicate an action related to a noncompete agreement in another state, deprives a worker of the substantive protection of Michigan law with respect to a claim for damages, or requires a worker to pay any of the costs of arbitration for a claim related to a noncompete agreement.

A worker aggrieved by a violation could bring an action to recover damages, and a court would have to award them both of the following if they prevail:

- 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.
- All income lost as a result of actual or threatened enforcement of the agreement or the unreasonable terms.

The bill would take effect 90 days after being enacted and would apply retroactively.

MCL 445.774a

BACKGROUND:

House Bill 4399 is similar to House Bill 4874 of the 2019-20 legislative session, which received a hearing in the House Commerce and Tourism committee but did not advance to the House floor.

In April 2024, the Federal Trade Commission (FTC) determined that noncompete agreements are an unfair method of competition and issued a rule that would ban most noncompete clauses.² Under the rule, current noncompete clauses (other than those for senior executives) would no longer be in effect. However, the rule was blocked by a federal court in August 2024 and cannot be enforced as it goes through the appeal process.

According to Axios, 38 states and Washington, D.C., limit noncompete agreements in some form as of April 2024.³ Four of these states—California, Oklahoma, Minnesota, and North Dakota—generally ban all noncompete agreements, while other states limit their use based on compensation and role. In December 2023, the governor of New York vetoed a bill to prohibit noncompete agreements.⁴

See <https://aspe.hhs.gov/poverty-guidelines>.

² For the full finalized rule, see: <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

³ <https://www.axios.com/2024/04/25/noncompete-agreement-ban-us-states-2024>

⁴ <https://www.nysenate.gov/legislation/bills/2023/S3100/amendment/A>

FISCAL IMPACT:

House Bill 4399 would have an indeterminate fiscal impact on local court systems. Under the bill, a worker aggrieved by a violation of the act may bring an action to recover damages. The fiscal impact would depend on the number of workers bringing actions in courts. Because there is no practical way to determine the number of actions that would occur under provisions of the bill, an estimate of the costs to local courts cannot be made.

POSITIONS:

Representatives of the following entities testified in support of the bill (4-13-23):

- Integrity Interiors Inc.
- Michigan Association for Justice
- Michigan Regional Council of Carpenters and Millwrights
- Woods Construction

The following entities indicated support for the bill:

- Department of Attorney General (12-5-24)
- IBEW Michigan State Conference (4-13-23)
- Michigan AFL-CIO (12-5-24)
- Michigan League for Public Policy (12-5-24)
- Michigan Nurses Association (12-5-24)
- Michigan Regional Council of Carpenters (12-5-24)
- United Food and Commercial Workers Local 876 (12-5-24)

The Michigan Immigrant Rights Center indicated a neutral position on the bill. (12-5-24)

Representatives of the following entities testified in opposition to the bill (4-13-23):

- Michigan Chamber of Commerce
- National Federation of Independent Business

The following entities indicated opposition to the bill (12-5-24):

- Associated Builders and Contractors of Michigan
- Detroit Regional Chamber
- Grand Rapids Chamber
- Home Builders Association of Michigan
- Michigan Ground Water Association
- Michigan Manufacturers Association
- Michigan Retailers Association
- Small Business Association of Michigan

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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.