

HOUSE BILL No. 5311

February 3, 2016, Introduced by Rep. Lucido and referred to the Committee on Commerce and Trade.

A bill to amend 1984 PA 274, entitled "Michigan antitrust reform act," by amending section 4a (MCL 445.774a), as added by 1987 PA 243.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) ~~An~~ **SUBJECT TO SUBSECTIONS (2) TO (7), AN** employer
2 may obtain from an employee ~~an~~ **A NONCOMPETE** agreement ~~or covenant~~
3 ~~which~~ **THAT** protects ~~an~~ **THE** employer's reasonable competitive
4 business interests and expressly prohibits an employee from
5 engaging in employment or a line of business after termination of
6 employment if the agreement ~~or covenant~~ is reasonable as to its
7 duration, geographical area, and the type of employment or line of
8 business. ~~To~~

9 (2) **AN EMPLOYER SHALL NOT OBTAIN A NONCOMPETE AGREEMENT FROM**
10 **AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT UNLESS THE EMPLOYER HAS**

1 DONE ALL OF THE FOLLOWING:

2 (A) PROVIDED APPLICANTS FOR THE POSITION WITH WRITTEN NOTICE
3 OF THE REQUIREMENT FOR A NONCOMPETE AGREEMENT.

4 (B) DISCLOSED THE TERMS OF THE NONCOMPETE AGREEMENT IN WRITING
5 BEFORE HIRING THE EMPLOYEE.

6 (C) POSTED THIS ACT OR A SUMMARY OF ITS REQUIREMENTS IN A
7 CONSPICUOUS PLACE AT THE WORKSITE WHERE IT IS ACCESSIBLE TO
8 EMPLOYEES.

9 (3) AN EMPLOYER SHALL NOT REQUEST OR OBTAIN A NONCOMPETE
10 AGREEMENT FROM AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT WHO IS, OR
11 WOULD BE HIRED AS, A LOW-WAGE EMPLOYEE. AS USED IN THIS SECTION,
12 "LOW-WAGE EMPLOYEE" MEANS AN EMPLOYEE WHO RECEIVES COMPENSATION
13 FROM THE EMPLOYER, EXCLUDING OVERTIME COMPENSATION, AT A RATE LESS
14 THAN THE GREATER OF ANY OF THE FOLLOWING:

15 (A) \$15.00 PER HOUR.

16 (B) 150% OF THE MINIMUM HOURLY WAGE ESTABLISHED UNDER SECTION
17 4 OF THE WORKFORCE OPPORTUNITY WAGE ACT, 2014 PA 138, MCL 408.414.

18 (C) ANNUAL COMPENSATION OF \$31,200.00, ADJUSTED FOR INFLATION
19 ANNUALLY BY THE STATE TREASURER BASED ON THE MOST COMPREHENSIVE
20 INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT AREA FROM THE
21 UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS AND
22 ROUNDED TO THE NEAREST MULTIPLE OF \$0.05.

23 (4) ALL OF THE FOLLOWING ARE VOID AND UNENFORCEABLE:

24 (A) A NONCOMPETE AGREEMENT OBTAINED IN VIOLATION OF SUBSECTION
25 (2) OR (3).

26 (B) A TERM IN AN AGREEMENT THAT PURPORTS TO WAIVE REQUIREMENTS
27 OF THIS SECTION.

1 (C) A CHOICE OF LAW PROVISION IN A CONTRACT, TO THE EXTENT
2 THAT IT WOULD NEGATE THE REQUIREMENTS OF THIS SECTION.

3 (5) THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE
4 SUBSECTION (3) IN A COURT OF COMPETENT JURISDICTION. AN EMPLOYER
5 WHO VIOLATES SUBSECTION (3) IS RESPONSIBLE FOR A CIVIL VIOLATION
6 AND SHALL BE FINED NOT MORE THAN \$5,000.00 FOR EACH EMPLOYEE WHO IS
7 A SUBJECT OF THE VIOLATION. THE FINE PROCEEDS SHALL BE DEPOSITED IN
8 THE STATE TREASURY.

9 (6) IN AN ACTION TO ENFORCE OR TO VOID OR LIMIT ENFORCEMENT OF
10 A NONCOMPETE AGREEMENT, THE EMPLOYER BEARS THE BURDEN OF
11 ESTABLISHING THAT THE EMPLOYEE WAS NOT A LOW-WAGE EMPLOYEE AND THAT
12 THE DURATION, GEOGRAPHICAL AREA, AND TYPE OF EMPLOYMENT OR LINE OF
13 BUSINESS ARE REASONABLE. THE COURT MAY VOID AN UNREASONABLE
14 AGREEMENT, OR TO the extent ~~any such~~ A NONCOMPETE agreement ~~or~~
15 ~~covenant~~ is found to be unreasonable in any respect, a court may
16 limit the agreement to render it reasonable in light of the
17 circumstances in which it was made and specifically enforce the
18 agreement as limited. IF THE COURT VOIDS OR LIMITS THE NONCOMPETE
19 AGREEMENT, THE COURT SHALL AWARD BOTH OF THE FOLLOWING:

20 (A) TO THE EMPLOYEE AND ANY OTHER INJURED PARTY, THE ACTUAL
21 COSTS OF THE ACTION THAT WERE NECESSARY TO DEFEND AGAINST
22 ENFORCEMENT OF THE NONCOMPETE AGREEMENT OR TO VOID OR LIMIT THE
23 AGREEMENT, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES.

24 (B) TO THE EMPLOYEE, ALL INCOME LOST AS A RESULT OF ACTUAL OR
25 THREATENED ENFORCEMENT OF THE VOID NONCOMPETE AGREEMENT OR THE
26 UNREASONABLE TERMS OF THE NONCOMPETE AGREEMENT.

27 (7) ~~(2)~~ This section ~~shall apply~~ APPLIES to covenants and

1 agreements ~~which are~~ entered into after March 29, 1985. **THIS**
2 **SECTION, AS AMENDED BY THE 2016 ACT THAT AMENDED THIS SECTION,**
3 **APPLIES TO NONCOMPETE AGREEMENTS ENTERED INTO AFTER THE EFFECTIVE**
4 **DATE OF THAT ACT.**

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.