

HOUSE BILL NO. 4874

August 29, 2019, Introduced by Reps. Manoogian, Brenda Carter, Sowerby, Rabhi, Lasinski, Brixie, Sabo, Coleman, Ellison, Haadsma, Kennedy, Sneller, Clemente, Kuppa, Witwer, Cherry, Stone, Shannon, Cynthia Johnson, Pagan, Wittenberg, Greig, Hood, Tyrone Carter, Elder, Hoadley, Chirkun, Tate, Hammoud, Camilleri, Anthony, Whitsett and Cambensy and referred to the Committee on Commerce and Tourism.

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



1 duration, geographical area, and the type of employment or line of
2 business. Te

3 (2) An employer shall not obtain a noncompete agreement from
4 an employee or applicant for employment unless the employer has
5 done all of the following:

6 (a) Provided applicants for the position with written notice
7 of the requirement for a noncompete agreement.

8 (b) Disclosed the terms of the noncompete agreement in writing
9 before hiring the employee.

10 (c) Posted this act or a summary of its requirements in a
11 conspicuous place at the worksite where it is accessible to
12 employees.

13 (3) An employer shall not request or obtain a noncompete
14 agreement from an employee or applicant for employment who is, or
15 would be hired as, a low-wage employee. As used in this section,
16 "low-wage employee" means an employee who receives compensation
17 from the employer, excluding overtime compensation, at a rate less
18 than the greater of any of the following:

19 (a) \$15.00 per hour.

20 (b) 150% of the minimum hourly wage established under section
21 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL
22 408.934.

23 (c) Annual compensation of \$31,200.00, adjusted for inflation
24 annually by the state treasurer based on the most comprehensive
25 index of consumer prices available for the Detroit area from the
26 United States Department of Labor, Bureau of Labor Statistics and
27 rounded to the nearest multiple of \$0.05.

28 (4) All of the following are void and unenforceable:

29 (a) A noncompete agreement obtained in violation of subsection



1 (2) or (3).

2 (b) A term in an agreement that purports to waive requirements
3 of this section.

4 (c) A choice of law provision in a contract, to the extent
5 that it would negate the requirements of this section.

6 (5) The attorney general may bring an action to enforce
7 subsection (3) in a court of competent jurisdiction. An employer
8 who violates subsection (3) is responsible for a civil violation
9 and must be fined not more than \$5,000.00 for each employee who is
10 a subject of the violation. The fine proceeds must be deposited in
11 the state treasury.

12 (6) In an action to enforce or to void or limit enforcement of
13 a noncompete agreement, the employer bears the burden of
14 establishing that the employee was not a low-wage employee and that
15 the duration, geographical area, and type of employment or line of
16 business are reasonable. The court may void an unreasonable
17 agreement, or to the extent ~~any such a noncompete~~ agreement ~~or~~
18 ~~covenant~~ is found to be unreasonable in any respect, a court may
19 limit the agreement to render it reasonable in light of the
20 circumstances in which it was made and specifically enforce the
21 agreement as limited. If the court voids or limits the noncompete
22 agreement, the court shall award both of the following:

23 (a) To the employee and any other injured party, the actual
24 costs of the action that were necessary to defend against
25 enforcement of the noncompete agreement or to void or limit the
26 agreement, including, but not limited to, reasonable attorney fees.

27 (b) To the employee, all income lost as a result of actual or
28 threatened enforcement of the void noncompete agreement or the
29 unreasonable terms of the noncompete agreement.



1 (7) ~~(2)~~ This section ~~shall apply~~ **applies** to covenants and
2 agreements ~~which are~~ entered into after March 29, 1985. **This**
3 **section, as amended by the amendatory act that added this sentence,**
4 **applies to noncompete agreements entered into after the effective**
5 **date of the amendatory act that added this sentence.**

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

