

# Legislative Analysis



## EMPLOYEE NONCOMPETE AGREEMENTS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4399 as introduced**  
**Sponsor: Rep. Denise Mentzer**  
**Committee: Labor**  
**Complete to 12-5-24**

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 retain this provision.

#### Notice and disclosure

The bill would add, however, that an employer cannot obtain a noncompete agreement unless the employer has done all of the following:

- Provided each applicant for the position with written notice of the noncompete agreement requirement.
- Disclosed the terms of the noncompete agreement in writing to an employee or an applicant for employment before hiring the employee.
- Posted section 4a (i.e., the bill) 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 violates this prohibition would be responsible for a civil infraction and fined up to \$5,000 for each employee or applicant who was a subject of the violation.

**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 at a rate less than 138% of the last published federal poverty line for a family of three.<sup>2</sup> The bill would require the

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

<sup>2</sup> Using the 2024 federal poverty guidelines, these annual wages would be \$35,631.60. See <https://aspe.hhs.gov/poverty-guidelines>.

Department of Labor and Economic Opportunity (LEO) to keep this rate posted on its public website.

*Wages* would mean all earnings of an employee, excluding bonuses or overtime.

#### 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 section 4a (i.e., the bill).
- A choice of law provision in an agreement, to the extent that it would negate the requirements of section 4a (i.e., 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

#### **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.<sup>3</sup> 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.<sup>4</sup> Four of these states—California, Oklahoma, Minnesota, and North Dakota—generally ban all noncompete agreements, while other states limit their use based on

---

<sup>3</sup> For the full finalized rule, see: <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

<sup>4</sup> <https://www.axios.com/2024/04/25/noncompete-agreement-ban-us-states-2024>

compensation and role. In December 2023, the governor of New York vetoed a bill to prohibit noncompete agreements.<sup>5</sup>

**FISCAL IMPACT:**

House Bill 4399 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, an employer would be prohibited from requesting or obtaining a noncompete agreement from an employee or an applicant for employment, who is, or who would be hired as, a low-wage employee. An employer that violates this provision would be responsible for a state civil infraction and would be ordered to pay a civil fine of not more than \$5,000 for each employee or applicant who is a subject of the violation. Revenue collected from the payment of civil fines is used to support public and county law libraries. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that would occur under provisions of the bill, an estimate of the amount of revenue for libraries or costs to local courts cannot be made.

Legislative Analyst: Holly Kuhn  
Fiscal Analyst: Robin Risko

---

■ 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.

---

<sup>5</sup> <https://www.nysenate.gov/legislation/bills/2023/S3100/amendment/A>