

HOUSE BILL NO. 4399

April 12, 2023, Introduced by Reps. Mentzer, Breen, Hood, Farhat, Brabec, Morse, Price, Weiss, Snyder, Brenda Carter, Tsernoglou, Hope, Haadsma and Scott and referred to the Committee on Labor.

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 this section, an** employer may
2 obtain from an employee ~~an~~**a noncompete** agreement ~~or covenant~~ which
3 **that** protects ~~an~~**the** employer's reasonable competitive business
4 interests and expressly prohibits an employee from engaging in
5 employment or a line of business after termination of employment if
6 the agreement ~~or covenant~~ is reasonable as to its duration,
7 geographical area, and the type of employment or line of business.

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

4 (a) Provided each applicant for the position with written
5 notice of the requirement for a noncompete agreement.

6 (b) Before hiring the employee, disclosed to the employee or
7 applicant for employment in writing the terms of the noncompete
8 agreement.

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

12 (3) An employer shall not request or obtain a noncompete
13 agreement from an employee or applicant for employment who is, or
14 would be hired as, a low-wage employee.

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

16 (a) A noncompete agreement obtained in violation of subsection
17 (2) or (3).

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

20 (c) A choice of law provision in an agreement, to the extent
21 that it would negate the requirements of this section.

22 (5) An employer who violates subsection (3) is responsible for
23 a state civil infraction and must be ordered to pay a civil fine of
24 not more than \$5,000.00 for each employee or applicant for
25 employment who is a subject of the violation.

26 (6) In an action to enforce or to void or limit enforcement of
27 a noncompete agreement, the employer bears the burden of
28 establishing that the employee was not a low-wage employee and that
29 the duration, geographical area, and type of employment or line of

1 business are reasonable. The court may void an unreasonable
 2 agreement or, to ~~to~~ the extent any such a noncompete agreement or
 3 covenant is found to be unreasonable in any respect, a court may
 4 limit the agreement to render it reasonable in light of the
 5 circumstances in which it was made and specifically enforce the
 6 agreement as limited. If the court voids or limits the noncompete
 7 agreement, the court shall award both of the following:

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

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

15 (7) ~~(2)~~ This section shall apply **applies** to covenants and
 16 agreements which are entered into after March 29, 1985. **This**
 17 section, as amended by the amendatory act that added subsection
 18 (8), applies to noncompete agreements entered into after the
 19 effective date of the amendatory act that added subsection (8).

20 (8) As used in this section:

21 (a) "Low-wage employee" means either of the following:

22 (i) A minor.

23 (ii) An employee as defined in 29 USC 203 who receives annual
 24 wages from the employer at a rate that is less than 138% of the
 25 last published federal poverty line for a family of 3 individuals.

26 (b) "Federal poverty line" means the poverty line as revised
 27 by the Secretary of the United States Department of Health and
 28 Human Services under 42 USC 9902.

29 (c) "Wages" means all earnings of an employee whether

1 determined on the basis of time, task, piece, commission, or other
2 method of calculation for labor or services. Wages does not include
3 bonuses or overtime earnings.

4 (9) The department of labor and economic opportunity shall
5 post and keep posted on its public website the rate described in
6 subsection (8) (a) (ii) .

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