

SENATE BILL NO. 143

March 07, 2023, Introduced by Senators MCMORROW, IRWIN, WOJNO, CHANG, POLEHANKI, SINGH, KLINEFELT, SANTANA, SHINK and CAVANAGH and referred to the Committee on Economic and Community Development.

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 the applicant for the position with written
7 notice 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 section 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 Bureau of Labor Statistics of the United States Department of
27 Labor, and 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 a
3 requirement of this section.

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

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

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

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

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

29 (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 amendatory act that added this sentence,**
3 **applies to noncompete agreements entered into after the effective**
4 **date of the amendatory act that added this sentence.**

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