

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 468
Finance

(Senator Astle)

Labor and Employment - Noncompete and Conflict of Interest Clauses

This bill establishes that a noncompete or conflict of interest provision in an employment contract or similar document or agreement that restricts the ability of an employee who earns \$15 per hour or less or \$31,200 or less annually to enter into employment with a new employer or become self-employed in the same or similar business or trade is null and void. The bill applies regardless of whether or not the employer and employee entered into the employment contract or similar document or agreement in the State.

Fiscal Summary

State Effect: None. The Department of Labor, Licensing, and Regulation can implement and enforce the bill with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Maryland does not have a general statute or regulation governing noncompetition covenants.

In a 1972 ruling in *Becker v. Bailey*, the Maryland Court of Appeals took up the issue of enforceable noncompetition agreements in employment contracts. The Court of Appeals found noncompetition agreements in employment contracts to be enforceable if they (1) are supported by adequate consideration; (2) are ancillary to an employment contract; (3) are limited to the area and duration which is needed to protect the employer; and

(4) do not impose an undue hardship on the employee or disregard the interests of the public.

Maryland follows the general rule that restrictive covenants may be applied and enforced only against those employees who provide unique services or to prevent the future misuse of trade secrets, routes or lists of clients, or solicitation of customers.

Maryland courts take a “blue-pencil” approach, which allows courts to strike or modify unreasonable provisions of a noncompetition covenant while enforcing the remainder of the covenant.

Small Business Effect: Small businesses with noncompete covenants may face increased competition from former employees, while some employers may be positively impacted if they are able to obtain more skilled employees. However, most workers paid \$15 per hour or less or \$31,200 annually or less either do not work in a business model, or are not exposed to information, that would typically lend itself to noncompete agreements. Thus, the bill has a minimal impact on small businesses.

Additional Information

Prior Introductions: HB 1440 of 2016 passed the House and received a hearing in the Senate Finance Committee, but no further action was taken. A similar bill, HB 946 of 2015, received an unfavorable report by the House Economic Matters Committee.

Cross File: HB 506 (Delegate Carr, *et al.*) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; University of Virginia Law School; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2017
md/mcr

Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510