FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 38
(Delegate Carr)

Economic Matters
Finance

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 as being against the public policy of the State. The bill does not apply to an employment contract or a similar document or agreement with respect to the taking or use of a client list or other proprietary client-related information. 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 bill can be enforced 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.

Under the Maryland Uniform Trade Secrets Act, a “trade secret” is information (including
a formula, pattern, compilation, program, device, method, technique, or process) that
(1) derives independent economic value, actual or potential, from not being generally
known to or readily ascertainable by other persons who can obtain economic value from
its disclosure or use and (2) is the subject of efforts that are reasonable under the
circumstances to maintain its secrecy. The Act provides injunctive relief for an actual or
threatened misappropriation of a trade secret. To qualify as misappropriation, one must
either acquire the trade secret by improper means or disclose the trade secret without
express or implied consent.

Additional Information

Prior Introductions: A similar bill, HB 506 of 2017, passed the House and was referred
to the Senate Finance Committee, but no further action was taken. Its cross file,
SB 468, received an unfavorable report by the Senate Finance Committee. Another similar
bill, HB 1440 of 2016, passed the House and received a hearing in the Senate Finance
Committee, but no further action was taken.


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