

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 328

(Senator Smith, *et al.*)

Finance

Economic Matters

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. The bill may not be construed to affect a determination by a court in an action involving a noncompete or conflict of interest provision that is not subject to the bill.

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.

Cross File: HB 38 (Delegate Carr) - 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 - January 31, 2019
an/mcr Third Reader - March 14, 2019
Revised - Amendment(s) - March 14, 2019
Enrolled - May 6, 2019
Revised - Amendment(s) - May 6, 2019

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