

Department of Legislative Services  
 Maryland General Assembly  
 2024 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 1388 (Delegate Hill, *et al.*)

Health and Government Operations and  
 Environment and Transportation

Finance

Labor and Employment - Noncompete and Conflict of Interest Clauses for  
 Veterinary and Health Care Professionals and Study of the Health Care Market

This bill expands the application of provisions of current law stating that a noncompete or conflict of interest provision in an employment contract is null and void under State law to an employment contract for an employee that is licensed as a veterinary practitioner or veterinary technician or, for employment contracts executed on or after July 1, 2025, specified health care professionals as discussed below. On request of a patient, an employer must provide notice to a patient of the new location where a former employee subject to specified provisions of the bill will be practicing. Additionally, the Maryland Health Care Commission (MHCC) must contract with a private consultant to study, in consultation with relevant stakeholders, specified topics related to the health care market in the State. The bill takes effect June 1, 2024.

Fiscal Summary

**State Effect:** No effect in FY 2024. Special fund expenditures increase by approximately \$150,000 only in FY 2025 for MHCC to hire a consultant to conduct the study. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	0	150,000	0	0	0
Net Effect	\$0	(\$150,000)	\$0	\$0	\$0

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** For employment contracts executed on or after July 1, 2025, the bill expands the application of provisions of current law stating that a noncompete or conflict of interest provision in an employment contract is null and void under State law to an employment contract for an employee who is required to be licensed under the Health Occupations Article, provides direct patient care, and earns \$350,000 or less in total annual compensation. This provision does not apply to an employment contract or a similar document or agreement with respect to the taking or use of a client or patient list or other proprietary client-related or patient-related information.

Licensed health care professionals providing direct patient care and earning more than \$350,000 may be subject to an employment contract or similar agreement that includes a noncompete or conflict of interest provision, but the noncompete or conflict of interest provision period for employment contracts executed on or after July 1, 2025, may not exceed one year from the last day of employment. In addition, the geographical restriction in a noncompete or conflict of interest provision in an applicable employment contract may not exceed 10 miles from the primary place of employment.

MHCC must study:

- the effect of private equity firms on the health care market in the State, including specified impacts;
- the payer mix for physician practices and groups with private equity ownership;
- the impact of hospital consolidations on physician practices;
- the acquisition of physician practices; and
- the impact on the ability of nonprofit hospitals and health systems to maintain access to care, including the ability to hire and retain physicians.

By January 1, 2025, MHCC must report to the Senate Finance Committee and the House Health and Government Operations Committee on the study's findings and recommendations.

**Current Law:** For an employee who earns equal to or less than 150% of the State minimum wage rate, a noncompete or conflict of interest provision in an employment contract or a similar document or agreement that restricts the ability of an employee to enter into employment with a new employer or to 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 provision is null and void whether or not the employer and employee entered into the employment contract or similar document or agreement in the State. The provision 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.

### *Federal Trade Commission*

The Federal Trade Commission (FTC) issued a final rule on April 23, 2024, banning noncompetes. Under the FTC's final rule, existing noncompetes for the vast majority of workers will no longer be enforceable after the rule's effective date, but existing noncompetes for senior executives can remain in force. Employers, however, are prohibited from entering into or enforcing new noncompetes with senior executives. The final rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions. The final rule will become effective 120 days after publication in the Federal Register.

### *Maryland Health Care Commission*

MHCC is an independent commission within the Maryland Department of Health with a mission to plan for health system needs, promote informed decision making, increase accountability, and improve access in a rapidly changing health care environment by providing timely and accurate information on availability, cost, and quality of services to policymakers, purchasers, providers, and the public.

**State Expenditures:** Assuming it takes at least one month to issue a request for proposal to hire a consultant for the bill's required study, special fund expenditures increase by approximately \$150,000 only in fiscal 2025 for MHCC to hire a consultant to conduct the study on the health care market in the State.

**Small Business Effect:** The bill has no effect on small businesses that employ low-wage licensed health care workers, veterinary practitioners, and veterinary technicians if these employees earn 150% or less of the State minimum wage rate. However, small businesses that employ veterinary practitioners and veterinary technicians earning more than 150% of the State minimum wage rate may no longer use noncompete agreements. Small businesses that employ licensed health care professionals who provide direct patient care and earn \$350,000 or less in annual compensation may no longer use noncompete agreements executed on or after July 1, 2025. Also, for employment contracts executed on or after July 1, 2025, the noncompete or conflict of interest provision period may not exceed one year from the last day of employment for licensed health care professionals who provide direct patient care and earn more than \$350,000 in annual compensation.

A recent study by the U.S. Government Accountability Office found that noncompete agreements reduce job mobility and may reduce wages and new firm creation. The study also reports that a substantial proportion of health care workers are subject to noncompete

agreements. Thus, the bill may have a potential meaningful impact on some small businesses that are veterinary practices or in the health care industry by potentially encouraging job mobility, higher wages, and new firm creation.

However, once the federal FTC final rule banning noncompetes takes effect, which is 120 days after its publication in the Federal Register, the bill has minimal effect on small businesses as only existing noncompetes for senior executives can remain in force under the FTC final rule. Regardless of when the FTC final rule takes effect, small businesses that employed licensed health care professionals who provided direct patient care and earned more than \$350,000 must provide notice to a patient upon the patient's request of the new location where a former employee will be practicing.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 1182 (Senator Jennings) - Rules.

**Information Source(s):** Maryland Association of County Health Officers; Maryland Department of Agriculture; Maryland Department of Health; Maryland Health Care Commission; Maryland Department of Labor; Federal Trade Commission; U.S. Government Accountability Office; Department of Legislative Services

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