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Limits on Non-Compete Agreements: Will Michigan Follow the National Trend?

Client Alert

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The last few years have seen an increase in state legislation imposing significant limitations, or outright bans, on the use of noncompetition agreements. In 2022 alone, legislation greatly limiting the use of noncompete agreements have been implemented in Illinois, Colorado, Oregon, and Washington D.C. Additionally, the State of New York has two competing bills proposing complete bans on the use of non-competes making their way through the legislature, Assembly Bill 2192 and Senate Bill 6425. This trend has now reached Michigan with the introduction of House Bill No. 6031,^[1] which would bring significant changes to noncompete legislation and the actions of employers if enacted.

On April 14, 2022, House Representative, Mari Manoogian, introduced HB No. 6031, which proposed limitations to noncompetition agreements through amendments to the Michigan Antitrust Reform Act of 1984.^[2] In addition to the current requirement that non-competes must be reasonable as to duration, geographical area, and the type of employment or line of business, HB 6031 proposes that employers must provide job applicants with written notice of the requirements for enforceable noncompete agreements, disclose the terms of the noncompete prior to hiring, and post a copy of the Antitrust Reform Act or a summary of the noncompete requirements at the worksite.

The bill also proposes a prohibition on employers entering into noncompete agreements with employees considered under the Act to be “low-wage” employees (minors and those making less than 138% of the federal poverty line). Employers are also barred from attempting to contractually circumvent the proposed requirements by including employee waivers or choice of law provisions negating any of the requirements of the Act in the

Related People

Javon R. David
Shareholder

Carey A. DeWitt
Shareholder

Bernard J. Fuhs
Director

Phillip C. Korovesis
Of Counsel

Paul M. Mersino
President & CEO

Ivonne M. Soler
Senior Attorney

Related Services

Trade Secret & Non-Compete
Specialty Team

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employment agreements. Employers found to be in violation of the bill's requirements may be fined \$5,000 for each applicant or employee who was subjected to the violation.

The proposed requirements of HB No. 6031 mirror the provisions found in the non-compete legislation of other states. For example, New York Assembly Bill A2192^[3] prohibits employers entering into noncompete agreements with low-wage employees. Oregon's modified noncompete legislation,^[4] which became effective on January 1, 2022, sets an employee minimum salary threshold of \$100,533 for noncompete agreements to be enforceable. Assessing a fine or penalty on violating employers is also present in noncompete legislation of other states. Washington D.C.'s noncompete legislation, effective October 1, 2022, which virtually bans all non-compete agreements between employers and employees, provides that the failure to comply with the ban may result in \$350-\$1,000 in penalties and \$500-\$1,000 in liability to each subjected employee.^[5] Similarly, violations of Colorado's revised non-compete statute, effective March 1, 2022, may now constitute a Class 2 misdemeanor, with penalties of \$750 and 120 days imprisonment per violation.^[6]

Michigan businesses must ensure compliance with any enacted legislation limiting non-compete agreements. Butzel will continue to monitor HB 6031, and any related bills, and will report on any changes to Michigan non-compete law.

Please contact the authors of this alert, or any member of Butzel's Trade Secret and Non-Compete Specialty Team, regarding the latest changes in noncompete law.

Javon David

248.258.1415

davidj@butzel.com

Joseph Kuzmiak

313.983.7497

kuzmiak@butzel.com

[1] H.B. 6031, 101st Leg., Reg. Sess. (Mich. 2022).

[2] MCL 445.775a (1984).

[3] A.B. A2192, Reg. Sess. (2021).

[4] ORS 653.295 (2022).

[5] D.C. Law 23-209. Ban on Non-Compete Agreements Amendment Act of 2020.

[6] CRS 8-2-113 (2022).