

# CLIENT ALERTS

## Michigan House Considering Changes to Non-Compete Statute

### Client Alert

4.24.2023

As the Federal Trade Commission considers a federal ban on non-compete agreements, with a timeline far on the horizon and much anticipated litigation to follow, the Michigan Legislature is taking up the call to amend Michigan's non-compete statute, found in the Michigan Antitrust Act of 1984.

On April 12, 2023, representatives introduced House Bill No. 4399, which would place more restrictions on Michigan employers' use of non-compete clauses. While this bill has not yet left the House Labor Committee for the entire House to consider, our Legislature appears primed to swiftly pass employment legislation.

### What changes are being considered?

1. The Bill bans non-competes with minors and low-wage employees who, without considering bonus or overtime, earn less than 138% of the last published federal poverty line for a family of three, which today would be \$34,306.08 or less.
2. Any employer who has or seeks to obtain a non-compete from a low-wage employee is subject to a state civil infraction of up to \$5,000 for each employee or applicant.
3. If employers seek a non-compete agreement with adult employees who meet the wage threshold, they must meet do the following, and if these conditions are not satisfied, the non-compete agreement obtained is void and unenforceable.
  - Provide each applicant with written notice that a non-compete is required for the position;
  - Before hiring the employee, disclose to the employee in writing the terms of the non-compete agreement; and
  - Post the law or a summary of its requirements in a conspicuous place in the worksite.

### Related People

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Sarah L. Nirenberg  
Shareholder

### Related Services

Non-Compete & Trade Secret

Trade Secret & Non-Compete  
Specialty Team

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4. While the Bill continues to maintain the non-compete statute's requirement that the non-compete clause be reasonable as to its duration, geographical area, and type of employment or line of business, it provides consequences for employers with non-compete agreements that are found by a court to be unreasonable in any respect. Specifically, if a court voids or limits the non-compete agreement the court *shall* award the employee and any other injured party, the costs of having to defend themselves and all income that the employee lost as a result or actual or threatened enforcement.

If the House passes the Bill, the above restrictions on non-compete agreements would not take effect until 90 days after Governor Whitmer signs the Bill into law. The law will likely be interpreted to void any non-compete agreements with minors or low-wage employees that were made before the law took effect. Employers can take action now by identifying whether they have non-compete agreements with minors and low-wage earners as well as reviewing their non-compete agreements and determining whether they continue to be reasonable and narrowly tailored to protect their legitimate business interest.

Your Butzel Noncompete and Trade Secret attorneys are at the ready to provide guidance on compliance with the potential changes to the noncompete statute. We will continue to monitor and report on the progress of this proposed state legislation.

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