Under Attack From All Sides: Federal and Michigan Bills Target Non-Compete Agreements

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Remember the Federal Trade Commission's (FTC's) attempt to ban non-compete agreements? The one that kept employers up at night before a Texas court struck it down last August? Well, Congress just entered the ring—again.

On June 11, 2025, a bipartisan group of senators—Chris Murphy (D-CT), Todd Young (R-IN), Kevin Cramer (R-ND), and Tim Kaine (D-VA)—introduced legislation that would effectively ban most non-compete agreements nationwide. If these names sound familiar, they should: this same group has been introducing versions of the "Workforce Mobility Act" since 2019. In fact, Congress has seen over a dozen attempts to regulate non-competes federally since 2015, when the Jimmy John's sandwich worker non-compete scandal first thrust the issue into the national spotlight.

This latest iteration—formally titled the "Workforce Mobility Act of 2025" but introduced as "A bill to prohibit certain noncompete agreements, and for other purposes"—arrives at a moment when states are increasingly restricting non-competes and public sentiment has shifted decidedly against them.

What's Familiar

Like the FTC rule, this bill preserves legitimate business protections with specific exceptions:

Sale of Business: Sellers can agree not to compete with buyers in geographic areas where the business operated. This includes:

- Direct business sales where the seller agrees to refrain from carrying on a similar business
- Senior executives acquired through the sale who meet ALL these criteria:

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- Responsible for major company decisions pre-sale
- In the top 10% of compensation
- Have a severance agreement worth at least one year's compensation
- Limited to one-year restrictions post-sale

Partnership Changes: Partners can agree that upon dissolution or leaving the partnership, they won't compete in areas where the partnership conducted business.

These exceptions recognize that some non-compete agreements serve legitimate purposes in protecting business value during ownership transitions.

Key Differences from the FTC Rule

The "Workforce Mobility Act of 2025" takes a different approach than the FTC:

- **Preserves trade secret protections—Section 4 explicitly allows confidentiality agreements (though the FTC rule also protected trade secrets, the federal bill provides clearer reassurance)**
- **No retroactive application**—Section 8(6) defines "noncompete agreement" as only those "entered into after the date of enactment of this Act"
- **Limited notification requirements**—employers must post notice of the Act's provisions in the workplace or where employment notices are customarily posted (much simpler than FTC's individual notification requirement)
- **Dual enforcement**—both FTC and Department of Labor can enforce
- **Private right of action**—employees can sue directly for violations

But here's the kicker: this bill prohibits mandatory arbitration for non-compete disputes and allows class actions—significantly expanding potential liability.

The State-Level Pile-On

Michigan businesses face a double threat. While Congress debates the Workforce Mobility Act, Michigan House Bill 4040 just landed on employers' desks. Introduced on January 30, 2025, this bill would essentially ban all employee non-competes in Michigan—and it's even more aggressive than the federal proposal:

- **Broader coverage**—includes independent contractors, interns, volunteers, and apprentices
- **Retroactive application**—would void existing non-competes (unlike the federal bill)
- **Strong remedies**—workers can recover attorney fees AND lost income
- **Limited exceptions**—non-compete agreements would be permitted only for business sales and narrow non-solicitation agreements that:

- Apply only to workers earning 200%+ of federal poverty guidelines
- Expire within one year
- Prohibit only solicitation of the business's customers (not general employment restrictions)

The Michigan bill's restrictions on non-solicitation agreements are particularly notable—they would be far more limited than what's currently permissible under Michigan law.

What Happens Next?

Both bills face uncertain paths through their respective legislatures. Federal legislation requires committee approval, floor votes in both chambers, and presidential signature. Michigan's bill must navigate similar hurdles in Lansing. Many proposed bills never make it through the early stages of this process.

That said, employers should monitor these developments closely given the bipartisan nature of the federal bill and the breadth of the Michigan proposal.

Your Action Items

Consider these steps to prepare for potential changes:

- **Review your current agreements**—identify which employees have non-competes and why
- **Strengthen alternative protections**—focus on trade secret policies, confidentiality agreements, and intellectual property (IP) assignments
- **Document legitimate business interests**—be ready to justify any restrictive covenants if your non-compete agreement is challenged
- **Monitor developments**—these bills may evolve as they move through the legislative process

The landscape for restrictive covenants continues to shift. Whether through federal legislation, state laws, or regulatory action, change appears likely in some form.

Questions about protecting your business interests in this changing environment? Contact the authors or your Butzel attorney. Butzel's Non-Compete/Trade Secret Team is tracking every development and ready to help you navigate whatever comes next.

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