



Employers Beware: Non-Competition Agreements Under Scrutiny in Michigan

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The Michigan House recently introduced a bill that would effectively eliminate an employer's right to protect its legitimate business interests through reasonably tailored restrictive covenants. House Bill No. 4198 would amend Michigan's current law, namely MCL 445.774a, and restrict the use of non-competition agreements solely in the context of the sale of a business. See House Bill No. 4198

If passed, such a law would deal a devastating blow to Michigan business and employers that utilize reasonably tailored restrictive covenants to protect their confidential business information, goodwill and employee talent, among other protectable business interests, that takes years and significant monetary resources to build and create. Indeed, such a law would roll back over almost thirty years of protection afforded Michigan employers and business that was granted when MCL 445.774a went into effect back in 1987.

Used properly, reasonably tailored restrictive covenants strike the proper balance between a business being assured that an employee will not unfairly undermine its customer goodwill, for example, by limiting competition for a limited period of time, and in a limited geographical area and line of business versus an employee's right to utilize his or her general employment skills in the profession or industry of their choosing. Michigan case law is replete recognizing an employer's right to protect itself from unfair competition that is attendant with an employee leaving the employ of one employer and joining another just to take the prior employer's customers, business information, among other interests, that took the prior employer years to develop. See e.g., *Superior Consultant Co, Inc v. Walling*, 851 F Supp 839 (ED Mich 1994); *Kelly Services, Inc. v. Noretto*, 495 F Supp2d 645 (ED Mich 2007); *Kelly Services, Inc. v. Marzullo*, 591 F Supp2d 924 (ED Mich 2008).

Given the recent resurgence of the Michigan economy but its continued delicate state, eliminating a reasonable competitive tool for Michigan employers and businesses can only serve to discourage continued business in the state. While it remains to be seen whether or not HB No. 4198 has enough steam to proceed, Michigan employers and businesses need to act now to ensure their legitimate business interests remain protected.

We will continue to monitor the progress of this bill and update accordingly.



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