

## **Potential Changes to Michigan's Non-Compete Laws**

I have written several articles that encourage business owners to include non-competition clauses within their employment contracts. Additionally, I routinely encourage business owners to have their contracts periodically reviewed by an attorney to ensure that the contract is in compliance with any newly enacted laws or to advise them of pending legislation. I really hate to gloat (not really though), but this article vindicates my incessant nagging. The Michigan House of Representatives has proposed a significant amendment governing Michigan's current non-competition laws.

Michigan's non-competition laws are governed by MCL 445.774a. Under this statute, generally, an employer may protect against an employee that may engage in the same line of business after the employee is no longer employed by the employer. However, these types of agreements must be reasonable in light of the duration of the prohibition, the geographical scope, and the type business involved.

The proposed amendment, House Bill 4198, would render non-competition clauses void. This amendment would apply to employees, contract laborers, or other individuals. However, the amendment does permit the purchaser(s) of a business to obtain a non-competition agreement from the seller(s) that would protect the purchaser's reasonable competitive business interests (e.g. cost information, pricing, contacting customers, etc). As currently drafted, the amendment would only apply to contracts entered into 90 days after the amendment is passed into law. The amendment is believed to only be applied prospectively, not retroactively. The reason for the proposed legislation is, in part, due to these agreements being used against low-skilled, hourly employees. Traditionally, the purpose of these agreements was to prevent corporate executives from disclosing confidential information.

Now it is unclear whether the proposed legislation will be passed into law. In the meantime, business owners should have their employment contracts reviewed by an attorney to ensure they are receiving the most protection under the current Michigan laws.

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