

HOUSE BILL NO. 4040

January 30, 2025, Introduced by Reps. Mentzer, Rheingans, Morgan, Martus, Andrews, McFall, McKinney, Steckloff, Koleszar and MacDonell and referred to Committee on Economic Competitiveness.

A bill to amend 1984 PA 274, entitled
"Michigan antitrust reform act,"
by amending section 4a (MCL 445.774a), as added by 1987 PA 243.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. ~~(1) An employer may obtain from an employee an~~
2 ~~agreement or covenant which protects an employer's reasonable~~
3 ~~competitive business interests and expressly prohibits an employee~~
4 ~~from engaging in employment or a line of business after termination~~
5 ~~of employment if the agreement or covenant is reasonable as to its~~

~~1 duration, geographical area, and the type of employment or line of
2 business. To the extent any such agreement or covenant is found to
3 be unreasonable in any respect, a court may limit the agreement to
4 render it reasonable in light of the circumstances in which it was
5 made and specifically enforce the agreement as limited.~~

~~6 (2) This section shall apply to covenants and agreements which
7 are entered into after March 29, 1985.~~

8 (1) Except as otherwise provided in subsection (2), a business
9 shall not do any of the following:

10 (a) Enter into or attempt to enter into a noncompete agreement
11 with a worker.

12 (b) Obtain or attempt to obtain a noncompete agreement from a
13 worker.

14 (c) Enforce or attempt to enforce a noncompete agreement
15 against a worker or former worker.

16 (d) Represent that a noncompete agreement applies to a worker
17 or former worker.

18 (2) Subsection (1) does not apply if both of the following
19 conditions are met:

20 (a) Either of the following applies to the worker:

21 (i) The worker is an owner of the business and the worker is
22 selling the business or the worker's full or partial ownership
23 interest in the business.

24 (ii) The worker is responsible for the sale of all or
25 substantially all of the business's operating assets.

26 (b) The noncompete agreement meets all of the following
27 conditions:

28 (i) Protects only the business's reasonable competitive
29 business interests.

1 (ii) Has a reasonable duration.

2 (iii) Restricts competition only in the relevant market.

3 (iv) Restricts competition only to the same type of trade or
4 commerce.

5 (3) All of the following are void and unenforceable:

6 (a) A noncompete agreement entered into or obtained in
7 violation of this section.

8 (b) A noncompete agreement that violates this section.

9 (c) A term in an agreement that does any of the following:

10 (i) Purports to waive a requirement of this section.

11 (ii) Requires a worker to adjudicate an action described in
12 subsection (4) in another state.

13 (iii) Deprives a worker of the substantive protection of the
14 laws of this state with respect to a claim described in subsection
15 (4).

16 (iv) Requires a worker to pay the costs, or any portion of the
17 costs, to arbitrate a claim related to the noncompete agreement.

18 (4) A worker aggrieved by a violation of this section may
19 bring an action to recover damages. A court shall award both of the
20 following to a plaintiff who prevails in an action brought under
21 this subsection:

22 (a) The actual costs of the action that were necessary to
23 defend against enforcement of the noncompete agreement or to void
24 or limit the agreement, including, but not limited to, reasonable
25 attorney fees.

26 (b) All income lost as a result of actual or threatened
27 enforcement of the noncompete agreement or the unreasonable terms
28 of the noncompete agreement.

29 (5) This section does not limit the enforceability of either

1 of the following:

2 (a) An agreement that prohibits a worker from disclosing
3 confidential information or trade secrets.

4 (b) An agreement that prohibits a worker from soliciting work
5 from a business if all of the following conditions are met:

6 (i) The worker provides work for the business.

7 (ii) The worker receives annual remuneration from the business
8 at a rate that is more than 200% of the last published federal
9 poverty line for a family of 3 individuals.

10 (iii) The agreement expires 1 year or less after the last date
11 that the worker provides work for the business.

12 (6) This section, as amended by the amendatory act that added
13 this sentence, applies to a noncompete agreement that is entered
14 into before, on, or after the effective date of that amendatory
15 act.

16 (7) As used in this section:

17 (a) "Business" means a corporation, business trust,
18 partnership, association, or any other legal entity.

19 (b) "Federal poverty line" means the poverty line as revised
20 by the Secretary of the United States Department of Health and
21 Human Services under 42 USC 9902.

22 (c) "Noncompete agreement" means an agreement between a
23 business and a worker that prohibits the worker from, penalizes the
24 worker for, or functions to prevent the worker from doing any of
25 the following after the worker's work with the business ends:

26 (i) Seeking or accepting work with a different business.

27 (ii) Operating a business.

28 (d) "Worker" means an employee, independent contractor,
29 extern, intern, volunteer, or apprentice.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.