

SF405 - 0 - Not to Compete Covenants Voided; Employment

Chief Author: **Alice Mann**
 Committee: **Labor**
 Date Completed: **2/7/2023 7:46:17 AM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Attorney General

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Attorney General						
General Fund	-	13	13	13	13	13
State Total						
General Fund	-	13	13	13	13	13
Total	-	13	13	13	13	13
Biennial Total			26			26

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Attorney General					
General Fund	-	-	-	-	-
Total	-	-	-	-	-

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 2/7/2023 7:46:17 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Attorney General						
General Fund	-	13	13	13	13	13
Total	-	13	13	13	13	13
	Biennial Total		26		26	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Attorney General						
General Fund	-	38	38	38	38	38
Total	-	38	38	38	38	38
	Biennial Total		76		76	
2 - Revenues, Transfers In*						
Attorney General						
General Fund	-	25	25	25	25	25
Total	-	25	25	25	25	25
	Biennial Total		50		50	

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Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 2/2/2023 3:54:28 PM
Phone: 651-296-6055 **Email:** karl.palm@lbo.mn.gov

State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Subdivision 1 Definitions

Defines a “covenant not to compete” as an agreement between an employer and an employee that restricts where, when, or the type of work an employee can perform after termination of employment. This section also defines “employer” to include individuals, partnerships, associations, corporations, business trusts or any person or group of persons acting in the interest of an employer.

Subdivision 2 Covenants not to compete void and unenforceable

Makes covenants not to compete void and unenforceable, unless:

- The employee earned an annual salary at least equal to the median family income for a four-person family in Minnesota (per US Census Bureau) at the time of termination, and
- The employer pays the employee at least 50% of the employee’s highest salary for the duration of the restricted period

Subdivision 3 Choice of law; venue

The employer cannot require the employee to agree to adjudicate outside of Minnesota a claim arising in Minnesota or deprive an employee of protections under Minnesota law for controversy arising in Minnesota.

Any provision in a contract that violates these provisions is voidable by the employee and shall be adjudicated in Minnesota and Minnesota law shall govern.

The employee may be entitled to injunctive relief as well as reasonable attorney fees and any other remedies available.

This subdivision does not apply to employees who are individually represented by an attorney in negotiating terms of an agreement regarding venue or forum.

Subdivision 4 Severability

Any provision of this section is found unconstitutional and void, the rest of the bill remains valid.

This bill would apply to contracts and agreements entered on or after the day following enactment.

Assumptions

This bill does not include enforcement or penalty authority for the Minnesota Department of Labor and Industry (DLI).

DLI may receive some inquiries from employers seeking information about updating their practices to align with the new law if enacted. DLI will work with its communication staff to update its website with information related to the law change if enacted and continue to guide inquirers to the new law for further reference and assistance when contacted. The inquiries and communication efforts would be immaterial.

Expenditure and/or Revenue Formula

NA

Long-Term Fiscal Considerations

NA

Local Fiscal Impact

NA

References/Sources

NA

Agency Contact: Jessica Grosz 651-284-5307

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SF405 - 0 - Not to Compete Covenants Voided; Employment

Chief Author: **Alice Mann**
 Committee: **Labor**
 Date Completed: **2/7/2023 7:46:17 AM**
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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Biennial Total			26			26

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Susan Nelson **Date:** 2/3/2023 2:16:05 PM
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State Cost (Savings) Calculation Details

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Total	-	13	13	13	13	13
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General Fund	-	38	38	38	38	38
Total	-	38	38	38	38	38
Biennial Total			76			76
2 - Revenues, Transfers In*						
General Fund	-	25	25	25	25	25
Total	-	25	25	25	25	25
Biennial Total			50			50

Bill Description

The bill would generally prohibit employment agreements from containing covenant not to compete clauses, which restrict an employee’s employment options after termination of the employment relationship. The bill would allow covenant not to compete clauses only where: (1) the employee earned an annual salary at least equal to the median family income of a four-person family in Minnesota, and (2) the employer agrees to pay the employee 50% of their highest annualized base salary (within the past two years preceding termination) during the entirety of the restricted period of the covenant not to compete clause. The Attorney General would have authority to enforce compliance with the requirements of this bill. The bill also provides a right of action to employees and allows them to obtain remedies of injunctive relief, reasonable attorney fees, and any other remedies available under the law.

Assumptions

The Attorney General’s Office estimates that it will expend 200 hours of attorney time and 50 hours of legal assistant (investigator/other staff) time per fiscal year.

The AGO estimates that it will expend 50 hours of investigator time monitoring compliance with the bill’s newly enacted prohibitions each fiscal year. The AGO estimates that it will also expend 200 attorney hours initiating investigations and enforcement action(s) pursuant to sections 181.1721 and 8.31 as it identifies suspected violations each fiscal year.

The AGO estimates that the use of covenant not to compete clauses by employers in employment agreements is prevalent, even for low-wage hourly workers. According to one study, nearly 30 million American workers, or one in every 5, currently work under a covenant not to compete clause, while approximately 60 million workers, or two in every 5, have been bound by a covenant not to compete clause at some point during their employment. According to another study, the majority of workers subject to covenant not to compete clauses are hourly workers. As a result, there is likely a multitude of covenant not to compete clauses in existence in Minnesota that would be prohibited by the bill.

The AGO estimates that after enactment of the bill and for the foreseeable future, its investigators will expend approximately 50 hours each fiscal year monitoring compliance with the bill and identifying potential violations of the bill. Subsequently, the AGO will seek to gain compliance with the bill’s requirements and initiate investigations into violations. Based on past hours expended in other wage and hour and consumer protection enforcement actions, the AGO estimates that at least one matter will progress to a formal investigation and/or litigation that attorneys in its consumer protection

section will expend at least 200 hours on each fiscal year.

The AGO can recover attorney's fees and costs of investigation if successful in proving violations of the bill, as well as civil penalties of up to \$25,000 per violation. See Minn. Stat. section 8.31, subds. 3, 3a. Recoveries for the State including civil penalties are deposited into the general fund pursuant to section 16A.151. Recognizing the uncertainties inherent in any litigation, and the uncertainties of predicting the fiscal year of recovery of such funds (which necessarily is at the end of litigation), the AGO assumes that recovery of fees and civil penalties will begin in FY24, and therefore does not project revenue in FY23. Starting in FY24, the AGO assumes it will bring and successfully litigate or settle at least one case each fiscal year that will provide revenue to the State, in addition to addressing the violation. The AGO estimates in each case it will, at a minimum, recover its costs and fees and civil penalties in the amount of \$25,000. Thus, revenue of \$25,000 per year is projected started in FY24.

The Attorney General's Office estimates that it will expend 200 hours of attorney time and 50 hours of legal assistant (investigator/other staff) time per fiscal year.

Expenditure and/or Revenue Formula

Expenditures:

	Hourly Billing Rate	Hours	Total Cost to AGO
Attorney, [division]	\$163	200	\$32,600
Legal assistant, [Investigator/other non-attorney staff]	\$103	50	\$5,150
<i>Other</i>			
Total	N/A		\$37,750

Revenue:

	Total Amount received	To General Fund	To Other: [Consumers/special fund/agency, may need to add columns]	To AGO
<i>e.g., litigation recovery</i>	(\$25,000)	(\$25,000)	(____)	0
Total	(\$25,000)	(\$25,000)		0

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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