

CONCURRENCE IN SENATE AMENDMENTS

AB 1076 (Bauer-Kahan)

As Amended July 10, 2023

Majority vote

SUMMARY

Codifies existing case law by specifying that the prohibition on noncompete agreements is to be broadly construed to void noncompete agreements or clauses in the employment context that do not satisfy specified exceptions. Additionally provides that a violation of the prohibition on noncompete agreements in employment constitutes unfair competition.

Senate Amendments

Specify that the written notice to an employee or former employee shall be delivered to the last known address and the email address of the employee or former employee.

COMMENTS

According to a 2019 study by the Economic Policy Institute, "Noncompete agreements are common across the country, including in California, despite noncompetes being unenforceable under California law. Even though these agreements would not stand up if challenged in California courts, businesses still can use them to pressure employees into not going to work for competitors."¹

In January 2023, the Federal Trade Commission (FTC) made headlines when it announced a proposed rule to ban noncompete clauses in contracts for employment. In its press release, the FTC noted that "companies use noncompetes for workers across industries and job levels, from hairstylists and warehouse workers to doctors and business executives. In many cases, employers use their outsized bargaining power to coerce workers into signing these contracts. Noncompetes harm competition in United States labor markets by blocking workers from pursuing better opportunities and by preventing employers from hiring the best available talent."²

The FTC proposed rule would ban noncompetes covering both employees and independent contractors. It would also ban "de-facto" noncompetes, so that clauses with the *effect of* prohibiting a worker from seeking or obtaining other employment or opening up a business would be illegal. Finally, it would require employers to notify current and former employees who we were previously subject to a noncompete that it is no longer in effect.

According to the Author

"AB 1076 protects employees by prohibiting the inclusion of noncompete agreements in an employee's contract. Although noncompete agreements are not enforceable in California, employers continue to include them in contracts which misleads employees and threatens their

¹ Colvin, Alexander J.S. and Shierholz, Heidi, "Noncompete agreements: Ubiquitous, harmful to wages and to competition, and part of a growing trend of employers requiring workers to sign away their rights," Economic Policy Institute, December 10, 2019.

² Federal Trade Commission, Press Release, "FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition," January 5, 2023.

job prospects. These noncompete agreements were originally meant to protect businesses' trade secrets, but they have disproportionately harmed women and people of color. The exploitative practice of including noncompete agreements deprives workers of fair compensation, stifles innovation, and deters entrepreneurship. This bill ensures that no employee is faced with signing away their rights as a condition of employment."

Arguments in Support

The California Nurses Association/National Nurses United (CNA) is in support and states, "While businesses with high pay or high levels of education are generally more likely to use noncompete agreements, noncompetes are also common in workplaces with low pay and where workers have fewer education credentials. According to the Economic Policy Institute approximately 30% of establishments offering an average hourly wage below \$13 require non-compete agreements for all their workers."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Senate Appropriations Committee, the Department of Justice (DOJ) reports costs of approximately \$442,000 in 2023-24 and \$778,000 annually thereafter to review complaints, investigate, and litigate potential violations of the prohibition on unlawful restraints (General Fund).

Unknown court workload cost pressures to the extent this bill results in increased litigation of employment agreements and contracts that run afoul of the prohibition on noncompete agreements and clauses (Trial Court Trust Fund, General Fund).

VOTES:

ASM LABOR AND EMPLOYMENT: 7-0-0

YES: Kalra, Flora, Chen, Haney, Ortega, Reyes, Ward

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Weber, Ortega

ABS, ABST OR NV: Robert Rivas

ASSEMBLY FLOOR: 80-0-0

YES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones- Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

UPDATED

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