

Department of Legislative Services  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 328  
Finance

(Senator Smith, *et al.*)

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**Labor and Employment - Noncompete and Conflict of Interest Clauses**

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This bill establishes that a noncompete or conflict of interest provision in an employment contract or similar document or agreement that restricts the ability of an employee who earns \$15 per hour or less or \$31,200 or less annually to enter into employment with a new employer or become self-employed in the same or similar business or trade is null and void as being against the public policy of the State. The bill applies regardless of whether or not the employer and employee entered into the employment contract or similar document or agreement in the State.

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**Fiscal Summary**

**State Effect:** None. The bill can be enforced with existing resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** Maryland does not have a general statute or regulation governing noncompetition covenants.

In a 1972 ruling in *Becker v. Bailey*, the Maryland Court of Appeals took up the issue of enforceable noncompetition agreements in employment contracts. The Court of Appeals found noncompetition agreements in employment contracts to be enforceable if they (1) are supported by adequate consideration; (2) are ancillary to an employment contract;

(3) are limited to the area and duration which is needed to protect the employer; and  
(4) do not impose an undue hardship on the employee or disregard the interests of the public.

Maryland follows the general rule that restrictive covenants may be applied and enforced only against those employees who provide unique services or to prevent the future misuse of trade secrets, routes or lists of clients, or solicitation of customers.

Maryland courts take a “blue-pencil” approach, which allows courts to strike or modify unreasonable provisions of a noncompetition covenant while enforcing the remainder of the covenant.

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### **Additional Information**

**Prior Introductions:** HB 506 of 2017 passed the House and was referred to the Senate Finance Committee, but no further action was taken. Its cross file, SB 468, received an unfavorable report by the Senate Finance Committee. HB 1440 of 2016 passed the House and received a hearing in the Senate Finance Committee, but no further action was taken.

**Cross File:** HB 38 (Delegate Carr) - Economic Matters.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; University of Virginia Law School; Department of Legislative Services

**Fiscal Note History:** First Reader - January 31, 2019  
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