

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 946 (Delegate Hornberger)  
Economic Matters

---

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

---

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 to enter into employment with a new employer or become self-employed in the same or similar business or trade is null and void. 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.

---

**Fiscal Summary**

**State Effect:** None. The Department of Labor, Licensing, and Regulation can implement and enforce the bill with existing resources.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

---

**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.

**Small Business Effect:** The bill may have a meaningful impact on small businesses with noncompete covenants due to increased competition from former employees. On the other hand, some employers may be positively impacted if they are able to obtain more skilled employees.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 5, 2015  
md/mcr

---

Analysis by: Heather N. Ruby

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510