



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 22-0956
Prime Sponsors: Rep. Tipper

Date: March 28, 2022
Bill Status: House Judiciary
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Bill Topic: **RESTRICTIVE EMPLOYMENT AGREEMENTS**

Summary of Fiscal Impact:

- | | |
|---|--|
| <input checked="" type="checkbox"/> State Revenue | <input checked="" type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

The bill prohibits certain restrictive post-employment agreements. It may increase state revenue and state and local workload on an ongoing basis beginning in FY 2022-23.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

Under current law, any covenant not to compete which restricts the right of any person to receive compensation for performance of skilled or unskilled labor for any employer is prohibited, with certain exceptions. The bill adds restrictive employment agreements to this prohibition and modifies the exceptions. Employee intimidation related to post-employment agreements is subject to an existing class 2 misdemeanor.

If proper notice of a restrictive employment agreement or covenant not to compete is provided by the employer to the employee or prospective employee, the following agreements or covenants are not prohibited:

- a provision providing for recovery of education and training expenses for employees who have served an employer for less than two years, unless the education and training was primarily for the benefit or convenience of the employer;
- a reasonable confidentiality provision relevant to the employer's business that does not prohibit disclosure of information that arises from the employee's general training, knowledge, skill, or experience, whether gained on the job or otherwise, or information that is readily ascertainable to the public; and
- agreements or covenants with a person earning annual cash compensation greater than the threshold amount for highly compensated employees.

The bill also limits choice of law and choice of venue provisions in restrictive employment agreements and covenants not to compete.

The bill prohibits an employer from entering into, presenting to an employee or prospective employee as a term of employment, or attempting to enforce any restrictive employment agreement or covenant not to compete that is void under the bill. An employer who violates this provision is subject to a penalty of \$5,000 for each employee or prospective employee, injunctive relief, and actual damages.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates a new factual basis for the existing offense of employee intimidation by adding restrictive employment agreements to the basis. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for this offense; therefore, the fiscal note assumes that there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

The bill may increase state revenue from fines on employers and court-related fees and fines. Any impact is expected to be minimal. This revenue is subject to TABOR.

State Expenditures

The bill increases state workload in the Department of Labor and Employment (CDLE), the Department of Law (DOL), the Department of Personnel and Administration (DPA), and the Judicial Department.

Department of Labor and Employment. The bill gives the Division of Labor Standards and Statistics authority to bring actions in court. Use of this authority is expected to happen on an as-needed basis, and no change in appropriations is required.

Department of Law. The DOL will provide support to CDLE as needed. Additionally, the Attorney General may bring actionable items to court. It is assumed that tips received for potential violations of the Consumer Protection Act will be assessed and prioritized based on merit and available resources. No change in appropriations is required.

Department of Personnel and Administration. The department will review its existing policies to ensure compliance with the bill. No change in appropriations is required.

Judicial Department. Trial court workload may increase as the Attorney General, CDLE, and any employee may bring an action for injunctive relief and actual damages. It is anticipated the volume of cases generated as a result of this proposed legislation will be minimal and can be handled within existing resources.

Local Government

Similar to the state, workload will increase for local governments to review existing policies and ensure compliance with the bill.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to restrictive employment agreements or covenants not to compete entered into or renewed on or after the applicable effective date of this act.

State and Local Government Contacts

Information Technology
Law

Judicial
Personnel

Labor
Regulatory Agencies