

Non-Compete Agreement Bill Stalls in MA Legislature

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The controversial non-compete agreement bill filed in the Massachusetts Legislature earlier this year has stalled. The bill's latest setback occurred when it was not included in the state's recently approved Economic Development Act.

The non-compete agreement bill, which had gained much support and appeared to be poised for approval in the spring, would have made dramatic changes in the enforceability of non-compete agreements in Massachusetts. Under the bill, the scope of employees who could be subject to a non-compete agreement would have been narrowed. Non-compete agreements would have been invalid and unenforceable against employees earning less than \$75,000 per year. The bill also required employers "to the extent feasible" to provide a prospective employee with a copy of the non-compete agreement and a notice that the non-compete agreement is a condition of employment, either seven days before the commencement of work or in a written employment offer. If an employment offer was oral, the employer would have been required to inform the prospective employee at the time that the offer was made that the non-compete agreement is a condition of employment or provide the prospective employee with a written notice of the non-compete requirement before the employee terminated his or her current employment.

As for existing employees, the bill required that an employee be provided "reasonably adequate consideration" in exchange for the signing of a non-compete agreement. Under the bill's language, a payment of ten percent of the employee's annual compensation was presumed to be "reasonably adequate." A continuation of employment was specifically deemed to be not "reasonably adequate" consideration.

Additionally, the bill, among other things, provided that the duration of a non-compete covenant could not exceed one year. It also required employers to pay the legal bills of employees if the employer, in certain circumstances, did not prevail in any litigation filed by the employer to enforce the covenant not to compete.

The bill appeared to be gaining steam in the Legislature in early 2010 and was reported out of committee. However, in the face of intense lobbying by business interests and associations, the bill began to lose legislative support and was not acted upon during the legislative session ending in July 2010. Additionally, as stated above, the bill was dropped from the state's recent Economic Development Act.

Supporters of the non-compete agreement bill have stated that they will re-file the legislation and that the problems raised by the bill's opponents will be addressed and/or compromised in order to ensure passage of the legislation. It is expected that the bill will be re-filed in the next legislative session.

Employers who utilize non-compete agreements in their businesses in order to protect valuable customers, trade secrets and confidential information should continue to monitor the bill and be prepared to take quick action in order to convince legislators that the bill is flawed.

We will continue to keep a close eye on the legislation and inform you of any further developments.