HB 22-1317

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated March 28, 2022)

Drafting Number:	LLS 22-0956	**Date:**	April 25, 2022
Prime Sponsors:	Rep. Tipper Sen. Bridges	**Bill Status:**	Senate Business
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Bill Topic:	**RESTRICTIVE EMPLOYMENT AGREEMENTS**
Summary of Fiscal Impact:	☒ State Revenue ☒ TABOR Refund ☒ State Expenditure ☒ Local Government ☐ State Transfer ☐ 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 revised fiscal note reflects the reengrossed bill.

Summary of Legislation

This bill creates a new factual basis for the existing class 2 misdemeanor offense of employee intimidation by adding covenants not to compete to the basis. An exception to this is for a covenant not to compete governing a person who, at the time the covenant not to compete is entered into and at the time it is enforced, earns an amount of annualized cash compensation equivalent to or greater than the threshold amount for highly compensated workers, if:

- the covenant not to compete is for the protection of trade secrets; and
- is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets.

Additionally, if the employer provides proper notice, the following covenants not to compete are allowable:

- a provision providing for reasonable cost recovery for educating and training an employee where the education or training is distinct from normal, on-the-job training;

- 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 or information that a worker otherwise has a right to disclose as legally protected conduct; and
- a covenant for the purchase and sale of a business or its assets.

The bill prohibits an employer from entering into, presenting to a worker or prospective worker as a term of employment, or attempting to enforce any 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, worker or prospective worker, 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 class 2 misdemeanor offense of employee intimidation by adding covenants not to compete 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 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	Judicial	Labor
Law	Personnel	Regulatory Agencies