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S.B. 11
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Sens. Blessing and DeMora

Local Impact Statement Procedure Required: No

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Highlights

- The bill prohibits agreements that restrain engaging in a lawful profession or business after the conclusion of an employment relationship, otherwise known as “noncompete agreements.”
- The bill requires the Department of Commerce (COM) to investigate claims of violations of the bill, and forward potential violations to the Attorney General. The Bureau of Wage and Hour Administration would likely handle these investigations.
- The bill allows a current or prospective worker or the Attorney General to sue an employer that violates the bill, potentially creating new causes of action in courts with jurisdiction over civil cases.

Detailed Analysis

The bill prohibits agreements that restrain engaging in a lawful profession or business after the conclusion of an employment relationship, otherwise known as “noncompete agreements.” Generally, such agreements typically restrict an employee from working for another employer for a specified period of time, in a specified geographic area, or in a similar capacity to their previous position. The bill prohibits such agreements as well as those that require an employee to pay for lost profits, lost goodwill, or liquidated damages due to the termination of the relationship; imposes fees on an employee, including those for termination of the working relationship, replacement hire fees, retraining fees, reimbursement for immigration or visa-related costs, or bondage fees; or requires reimbursement of expenses for the training, orientation, evaluation of an employee, or services designed to improve skills associated with the position.

The bill provides several remedies for enforcement including allowing an individual to sue an employer, and/or to file a complaint alleging a violation of the bill with the Attorney General or the Department of Commerce. If such a complaint is filed with either state agency, the Attorney General or the Department of Commerce must investigate those complaints. The Attorney General may sue an employer on a complainant's behalf if the investigation reveals that the employer likely violated the bill.

Fiscal effects

Though it is difficult to determine how many Ohioans currently work under a noncompete agreement, the Federal Trade Commission (FTC) estimates one in five Americans have some form of noncompete clause as a condition of employment.¹ As a result of the bill, there will likely be new enforcement actions filed on behalf of employees against employers. However, there could also be fewer disputes made in civil courts by employers against employees (both current and former) as such agreements would no longer be enforceable. The bill provides for essentially three avenues for satisfaction, as described below.

Department of Commerce

The bill allows complaints concerning noncompete agreements to be filed with the Department of Commerce, which must investigate and, if it finds that a likely violation has occurred, forward its findings to the Attorney General. Consequently, the Bureau of Wage and Hour within the Division of Industrial Compliance, which would handle any complaints, could incur additional costs. The Wage and Hour Bureau is funded through the Industrial Compliance Fund (Fund 5560). Finally, the bill requires the Attorney General and the Director of Commerce to enter into a written agreement coordinating their responsibilities with respect to the bill. Any resulting fiscal effect would depend on the terms of this agreement.

Attorney General

The bill also allows for complaints to be filed with the Attorney General alleging a violation of the bill. The Attorney General must investigate such a complaint and notify the Director of Commerce. If it is determined that a violation has likely occurred, the Attorney General may sue the employer on behalf of the worker or prospective worker. If the Attorney General prevails, the court must award costs and reasonable attorney's fees to the Attorney General and any of the following to the worker or prospective worker as appropriate: actual damages, punitive damages not to exceed \$5,000, and injunctive relief.

As matter of practice, the Attorney General's Office typically attempts to resolve complaints of this nature administratively. If complaints are not resolved, some number of civil cases may be generated in courts of common pleas, municipal, and county courts. The number of new case filings are likely to be small statewide. The bill is silent as to where the attorney fees would be credited, but any such revenue would likely be deposited to Fund 1060, General Reimbursement.

¹ See "[FTC Announces Rule Banning Noncompetes](#)" which is available under "Press Releases" on the FTC website at: ftc.gov.

Civil actions

The bill provides for a civil remedy to a current or prospective worker for an alleged violation of the bill. In the event a worker or prospective worker prevails, the court must award costs and reasonable attorney's fees to the worker or prospective worker. A court also may award any of the following, as appropriate: actual damages, punitive damages not to exceed \$5,000, and injunctive relief.

The effect on the daily operations and related operating expenses of the courts will depend on the monetary amount being sought by the victim, the frequency of civil actions being filed, and the matter's legal complexity. Costs would likely be partially offset by filing fees charged by the court. Municipal and county courts have limited civil jurisdiction, and may only hear cases in which the amount of money in dispute does not exceed \$15,000. Common pleas courts hear all cases in which the amount of money in dispute is more than \$15,000. The number of new civil cases that may result is uncertain but likely will be minimal for any single jurisdiction and court.

While it is possible that some courts will experience new case filings, either from individuals or the Attorney General, the costs related to these new filings will be at least partially offset by the collection of a filing fee. Likewise, there may also be an offsetting decrease in filings from employers to the extent that those parties are filing cases now to enforce such noncompete agreements. Those cases would either no longer be filed, or if filed, dismissed more quickly, further offsetting any net costs created by the bill's creation of a new cause of action.