

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2112H.011
Bill No.: HB 1008
Subject: Business and Commerce; Labor and Management; Employees - Employers;
Contracts And Contractors
Type: Original
Date: March 29, 2021

Bill Summary: This proposal modifies provisions relating to covenants involving business entities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations, Attorney General’s Office, Missouri Department of Conservation, Office of the State Courts Administrator, and Missouri Department of Transportation** each assume the proposal would not have a direct fiscal impact on their respective organization.

In response to a similar proposal, SB 181, officials from the **Office of Administration** assumed the proposal would not have a direct fiscal impact on their respective organization.

Officials from the **University of Missouri System, Missouri State University, Northwest Missouri State University, and State Technical College of Missouri** each assume the proposal would not have a direct fiscal impact on their respective organization.

Officials from the **City of Corder, City of Kansas City, City of O’Fallon, City of Springfield and High Point R-III School** each assume the proposal would not have a direct fiscal impact on their respective organization.

Officials from the above organizations assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other state agencies, cities, counties, schools, colleges, universities, and counties were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill modifies provisions relating to covenants between business entities and employees, distributors, dealers, franchisees, lessees, licensees, or owners or sellers of assets or interests in a business entity.

Currently, a covenant regarding solicitation, hiring, or otherwise interfering with an employee is enforceable if certain criteria is met. This bill modifies that provision and requires that a covenant between an employer and an employee promising not to solicit, recruit, hire, induce, persuade, encourage, or otherwise interfere with an employee is enforceable if the covenant is between employers and employees, excluding secretarial or clerical employees with no interest in the business entity, and the postemployment or post-business duration is no more than two years. Additionally, a covenant regarding interference with an employee shall be conclusively presumed to be reasonable if its postemployment or post-business duration is no more than two years, instead of one year.

The bill provides that a reasonable covenant in writing promising not to solicit, induce, persuade, encourage, accept business from, or otherwise interfere with, directly or indirectly, a business entity's customers shall be enforceable if the following requirements are met:

- (1) The covenant is limited to customers with whom the employee dealt, as defined in the bill and is not associated with the sale or ownership of assets or any interest in a business entity and does not continue for more than two years following the end of employment;
- (2) The covenant between a business entity and a distributor, dealer, franchisee, lessee of real or personal property, or licensee of a trademark, trade dress, or service mark is not associated with the sale or ownership of assets or any interest in a business entity and does not continue for more than three years following the end of the business relationship; or
- (3) The covenant between a business entity and the owner or seller of assets or interest in a business entity does not continue for more than the longer of either five years or the period during which payments are made as measured from the date of termination, closing, or disposition.

A breach or threatened breach of a covenant between a business entity and the owner or seller of assets or interest in a business entity shall create a presumption of irreparable harm in the absence of injunctive relief without the necessity of establishing evidence of any actual or threatened damages or harm. Additionally, a provision in such a covenant in which an employee promises to provide notice to a business entity of the employee's intent to terminate, sell, or otherwise dispose of an asset or interest is presumed to be enforceable if the notice period is no longer than 30 days and the business entity agrees to pay the employee's regular rate of pay and regular benefits during the notice period.

(4) The reasonableness of a covenant shall be determined by the facts and circumstances pertaining to it. Furthermore, the bill provides that a covenant shall be presumed to be reasonable if its post-employment, post-termination, post-business relationship, post-sale, or post-disposition duration does not exceed the duration requirements.

(5) No express reference to geographical area is required for the enforceability of a covenant.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Attorney General's Office
Missouri Department of Conservation
Office of the State Courts Administrator
Missouri Department of Transportation
University of Missouri System
Missouri State University
Northwest Missouri State University
State Technical College of Missouri
City of Corder
City of Kansas City
City of O'Fallon
City of Springfield
High Point R-III



Julie Morff
Director
March 29, 2021



Ross Strobe
Assistant Director
March 29, 2021