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Noncompete Agreements and Other Restrictive Covenants

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Noncompete provisions can often be overlooked in the grand scheme of business planning. Understanding the law governing these provisions is key to drafting them in a way that ensures enforceability. Historically, courts analyzed the enforceability of noncompete provisions under a common law rubric. More recently, the relevant considerations have been codified and further developed with caselaw. This article examines the evolution of Michigan law on noncompete provisions, their application in employment and business contexts, and important considerations for drafting enforceable agreements in today's legal landscape.

Noncompete Agreements

A. Development of Michigan Law on Noncompete Agreements

1. Enforceability of Noncompete Agreements Before 1985

Before 1905, Michigan courts used the common law "rule of reason" approach set forth in *Hubbard v Miller*[1] to determine whether a noncompete agreement was enforceable. A noncompete agreement was enforceable if, considering the business and the parties, the agreement served to protect legitimate business interests and was "not specially injurious to the public."[2]

In 1905, the Michigan legislature enacted MCL 445.761, which largely prohibited noncompete agreements as "against public policy, illegal and void."[3] The statute provided two exceptions to the prohibition. Noncompete agreements were permissible in the sale of a business, or for a 90-day period following an employee's termination where the employer disclosed its customer list to the employee.[4]

2. The Michigan Antitrust Reform Act (MARA) and Subsequent Caselaw

Under the current framework, noncompete agreements must be reasonable to be enforceable.[5]

In 1985, MCL 445.761 was repealed through the enactment of the Michigan Antitrust Reform Act (the "MARA"), MCL 445.771, *et seq*.[6] The MARA did not specifically address noncompete provisions, but it did provide that the legislature intended that courts give "due deference" to federal courts' interpretations of comparable statutes, including, the "rule of reason."[7]

In 1987, the Michigan legislature enacted MCL 445.774a to clarify the enforceability of noncompete provisions. MCL 445.774a(1) expressly permits a reasonable noncompete agreement in the employment context if it "protects an employer's reasonable competitive business interests" and "is reasonable as to duration, geographical area, and the type of employment or line of business."[8] That statute also permits courts to "limit the agreement to render it reasonable, in light of the circumstances in which it was made and specifically enforce the agreement as limited."[9] MCL 445.774a applies only to agreements entered into after March 29, 1985.[10]

In *Innovation Ventures v Liquid Manufacturing*,[11] the Michigan Supreme Court assessed the standard for enforceability of a noncompete agreement between two businesses. The court noted that although MCL 445.774a provides framework for evaluating noncompete agreements only in the employment context, MCL 445.784(2) guides courts to look at how federal courts interpret similar statutes.[12] The court concluded that noncompete agreements between business entities are evaluated using the rule of reason and the trial court must consider the noncompete restriction's impact on competition within the relevant product market.[13]

B. Types of Noncompete Agreements

The most common type of noncompete agreement is between an employer and employee and restricts the employee's ability to compete against the employer during and after the employment relationship.

A more infrequent type of noncompete restriction is a covenant between a buyer and seller of a business entity. Here, the buyer is

concerned with protecting the benefit of the bargain and seeks to restrict the seller from operating or working for a competitive business in a particular geographical area and for a certain amount of time after the sale.

Noncompete restrictions are also used in other contexts, including with respect to ownership of a business (e.g., in a shareholders or operating agreement) and in franchisee-franchisor relationships. There can be a question as to whether a noncompete provision in a shareholder agreement actually governs relationships between the shareholders (a more relaxed standard of review) or is a disguised employee noncompete (a more stringent standard of review).

1. Employment Context

In the employment context, courts evaluate the enforceability of noncompete provisions under the framework provided in MCL 445.774a(1)—the restriction must protect the employer's reasonable competitive business interests *and* must be reasonable with respect to (1) duration, (2) geographical scope, and (3) type of employment or line of business.

Noncompete agreements between an employer and employee are typically construed more strictly than those outside the employment context, such as between two business entities. This is largely a function of the unequal bargaining power in an employer-employee relationship, whereas commercial noncompete agreements are generally products of negotiation between more sophisticated parties. In the employment context, an agreement must be "reasonable in relation to an employer's competitive business interest," which means that it "must protect against the employee's gaining some unfair advantage in competition with the employer, but not prohibit the employee from using general knowledge or skill" that the employee gained while working for the former employer or otherwise.[14]

2. Between Business Owners

Courts are likely to use a more lenient standard to evaluate reasonableness where contracting parties are on equal footing and the relationship is more like a commercial transaction, for example, in the context of an operating agreement, shareholders agreement, or the sale of a business. Where a party's ownership in an entity arises out of his or her employment, a court may adopt a stricter view in determining the enforceability of the noncompete provision.

C. Enforceability of Noncompete Agreements

1. Competitive Business Interests

Safeguarding against the anticompetitive use of confidential information constitutes a legitimate business interest. A noncompete may reasonably protect an entity's trade secrets, confidential information, customer lists, or pricing and cost information.[15] Merely preventing competition is not a sufficient business interest to justify a noncompete.[16]

2. Examples of Enforceable Noncompete Provisions

In *Coates v Bastian Bros, Inc*, the plaintiff worked for the defendant graphic communications and advertising firm for 22 years. The Court of Appeals upheld the noncompete barring the plaintiff from participating in any entity in competition with (i.e., within 100 miles of any of the defendant's locations) the defendant for one year after termination for any reason.[17] The provision was reasonable because of "its limited temporal scope, its modest geographic scope, and the undisputed length of plaintiff's employment" with the company.[18]

A noncompete provision barring a physician employee from practicing medicine within a seven-mile radius of his employer and providing liquidated damages was upheld in *St Clair Med, PC v Borgiel*.[19] The court deemed the seven-mile radius modest, given the plaintiff employer's interest in retaining its patients.[20]

Applying Michigan law in *Midfield Concession Enterprises, Inc v Areas USA, Inc.*, the United States District Court for the Eastern District of Michigan upheld a noncompete provision between two entities barring each from bidding on opportunities at Detroit Metropolitan Airport if the other party was interested in the opportunity.[21] The court noted that the provision was limited to the airport, terminated when the parties' relationship terminated, and only precluded the defendant from bidding on interests that plaintiff also intended to bid on.[22]

3. Duration

There is no bright-line rule for determining whether the length of a noncompete restriction is reasonable. Michigan courts have upheld restrictions ranging from six months to multiple years.[23] Courts will evaluate whether the duration is reasonably tailored

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to protect the entity's legitimate business interests. Whether the duration is reasonable depends upon the circumstances surrounding the agreement, such as nature of the industry and the scope of prohibited activities. Generally, the longer the duration of a noncompete, the narrower it should be in terms of geographic scope and line of business, particularly in the employment context.

In *St Clair Med*, the court upheld a physician employee's one-year noncompete restriction because it gave the plaintiff employer "time to regain goodwill with its patients."[24] A two-year restriction on solicitation in the accounting profession was reasonable under *Rooyaker & Sitz, PLLC v Plante & Moran, PLLC*, because the nature of the profession required the employee to acquire confidential information about the employer and the clients.[25]

Outside the employment context, courts are more likely to uphold longer duration restrictions since the parties tend to be on more equal footing. A five-year duration was enforceable in an agreement concerning the sale of a business in *Bryan v Lincare*.[26] In *Midfield Concession Enterprises, Inc.*, the court upheld the noncompete that lasted for the duration of the relationship where the parties knew, at the time of contracting, that the duration would be five or six years.[27]

4. Geographical Restriction

A geographic restriction must be tailored to reasonably protect an employer's legitimate business interests.[28] If the provision bars competition in a location where the employer or entity does not engage in any business, then its geographical scope is likely unreasonable.

Courts view geographically unlimited noncompetes with skepticism, though a noncompete with no geographic restriction can be reasonable if the employer has sufficient international business interests.[29] This was not the case in *Whirlpool Corp v Burns*, where, even though the plaintiff engaged in domestic and international business, the court struck down a provision that would have prevented the defendant from selling appliances around the world even if the sales did not involve the plaintiff's customers or confidential information.[30]

If a noncompete provision is deemed unreasonably overbroad in geographic scope, a court may reform the restriction pursuant to the discretion afforded under MCL 445.774a(1).[31]

5. Type of Employment or Line of Business

The type of employment or line of business proscribed in a noncompete provision should be tailored to protect the employer's legitimate business interests.[32] The Court of Appeals found that the line-of-business restriction in *Hurton Tech Corp v Sparling* was unreasonable where it prohibited "defendant from working for a business that offers a single product or service that is 'competitive' with any product or service offered by plaintiff, regardless of whether the business is in actual competition with plaintiff."[33] In contrast, the United States District Court for the Eastern District of Michigan found that a restriction on "healthcare information systems consulting businesses" was reasonable where the employer's business involved providing information systems and management consulting services to large healthcare institutions.[34]

In analyzing the line of employment or type of business, courts consider whether the restriction is reasonable both with respect to the industry and employment position. Certain courts in Michigan and elsewhere have found that provisions that limit a former employee's ability to work "in any capacity for a competitor of a former employer is too broad to be enforceable."[35]

In analyzing the line of employment or type of business, courts consider whether the restriction is reasonable both with respect to the industry and employment position.

D. Defenses to Claim for Breach of Noncompete Agreement

1. Unenforceability

The party seeking to avoid a noncompete restriction will argue it is unreasonable and therefore unenforceable. The challenging party may argue that the noncompete agreement is unreasonable on its face (e.g., unlimited duration and/or geographical scope), that it is unreasonable as to that party (i.e., the specific circumstances militate against enforcement), or both.[36] The party seeking to enforce the provision bears the burden to demonstrate its validity and must establish that the restriction protects legitimate business interests and is reasonable as to geographic scope and duration.[37]

2. Lack of Consideration

Outside the employment context, there is typically no question that a noncompete agreement is supported by sufficient consideration. This is less certain in the employment context. Courts in various jurisdictions find sufficient consideration where a new

employee signs a noncompete agreement as a hiring condition, but the authority is divided as to noncompete restrictions imposed upon current at-will employees in exchange for continued employment.

In Michigan, it appears that continued employment *is* sufficient consideration to support a noncompete agreement. In *QIS, Inc v Indus Quality Control, Inc*, the Court of Appeals determined that "mere continuation of employment is sufficient consideration to support a noncompete agreement in an at-will employment setting."[38]

3. First Substantial Breach

Michigan courts recognize first substantial breach as a defense against noncompete agreements.[39] In the employment context, courts in other jurisdictions have found that terminating an employee in bad-faith or without proper cause is a first material breach which vitiates the noncompete restriction against that employee.[40]

The basis for this defense cannot be an event that was explicitly anticipated in the parties' contract.[41] The *Coates* court rejected an employee's argument that the employer committed the first breach of the employment agreement by terminating her without cause. In that case, the agreement prohibited the employee from competing regardless of the reason for her termination.[42]

E. Available Remedies for Breach of Noncompete Provisions

1. Injunctive Relief

Parties asserting a claim for breach of a noncompete agreement commonly seek an injunction to enjoin the other party's conduct, and courts will order this relief if the movant satisfies its burden under the four-factor standard for an injunction.[43] Courts often employ this standard even if the agreement provides that the movant need not satisfy the standard for injunctive relief.

2. Damages

Money damages are an available remedy for breach of a noncompete agreement.[44] An employer or business entity may wish to include liquidated damages in a noncompete agreement. This is enforceable provided that the liquidated damages provision is itself enforceable (i.e., reasonable with respect to the potential injury suffered and not excessive or unconscionable).[45]

3. Reformation

Michigan law permits courts to reform unreasonable noncompete agreements to make them reasonable.[46] It is not uncommon for courts to exercise this discretionary power.[47] However, courts are not required to reform the provision and may void it altogether.[48]

F. Future of Noncompete Agreements

1. In General

Over the past decade or so, there has been increasing movement at the state and national level to ban or restrict noncompete agreements.

2. Efforts to Restrict or Ban Noncompete Agreements in Michigan

There have been several efforts in Michigan to ban and/or impose additional restrictions on noncompete agreements. Many of these bills were not cosponsored and never passed.[49] Most recently, HB 4399 was referred to the Committee on Labor in May 2023.[50]

3. Developments at the Federal Level

In January 2023, the Federal Trade Commission ("FTC") proposed a rule to ban most noncompete clauses nationally. The rule would prohibit employers from entering noncompete agreements with employees or independent contractors, render existing employee noncompete agreements unenforceable, and require employers to notify employees about the ban. The FTC formally adopted this rule in April 2024. A Texas federal court struck down the rule in August 2024.[51]

On May 30, 2023, the National Labor Relations Board issued a memo stating that overbroad noncompete agreements were unlawful except in narrow circumstances.

Other Restrictive Covenants

A. Nonsolicitation Agreement

Nonsolicitation provisions are often used in tandem with noncompete restrictions. A nonsolicitation restriction prohibits an individual or entity from *soliciting* the employer's or business's clients/customers, employees, and/or suppliers.[52]

Courts applying Michigan law generally evaluate the enforceability of nonsolicitation provisions under the same reasonableness framework applied to noncompete provisions.[53] In *Total Quality, Inc v Fewless*, the Michigan Court of Appeals rejected

Nonsolicitation provisions are often used in tandem with noncompete restrictions.

the defendants' argument that a two-year nonsolicitation provision ran afoul of MCL 445.774a(1). The court determined that even if MCL 445.774a(1) applied, the nonsolicitation restriction was reasonable.[54]

B. Nondisclosure Agreement

Nondisclosure agreements are designed to protect a business's confidential and/or trade-secret information. These provisions can be used as a complement or an alternative to a noncompete agreement, though they restrict trade to a lesser degree than a noncompete agreement. Nondisclosure agreements will typically be evaluated with more leniency than a noncompete.

A benefit of nondisclosure agreements is that they can provide employers and businesses with more certain protection than trade secret law. For example, it is unclear whether customer or client lists qualify as trade secrets, and thus it is typically a question of fact that depends on the circumstances. However, this information can be protected by a nondisclosure agreement, provided that the agreement is reasonable (e.g., information is not publicly available, restrictions are not overbroad in relation to the business's legitimate interest in protecting confidential information, etc.).[55]

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C. Noncircumvention Agreement

A noncircumvention covenant prohibits a party from usurping business opportunities of the other party. Like nonsolicitation and nondisclosure agreements, noncircumvention agreements will generally be subject to less judicial scrutiny than noncompete restrictions.

Drafting Considerations

A. Who is the Client?

The party seeking to impose the noncompete restriction (e.g., employer, corporation, purchaser of a business) will typically want a broader noncompete agreement to protect itself from a wide variety of competitive activities.

In contrast, the party bound by the noncompete provision (e.g., employee, shareholder, seller of a business) will want a narrow restriction that will not unduly interfere with their ability to make a living and/or engage in noncompetitive business activity.

B. Remember the Requirements for an Enforceable Noncompete Restriction

Review MCL 445.774a. Remember that courts will enforce the provision only if it protects legitimate competitive business interests and is reasonable in duration, geographic scope, and line of business/type of employment.

C. Review Sample Agreements

Sample agreements can provide a useful starting point,[56] but must be tailored to the individual circumstances and needs of each client.

D. What is the Relevant Context?

The reasonableness standard that will apply to the noncompete agreement depends upon the context from which the restriction arises. Courts will most heavily scrutinize noncompete restrictions against employees, especially as to lower-level workers; drafters should be cognizant of this fact and draft more narrowly-tailored provisions in these circumstances. Outside the employment context, however, drafters can likely draft broader restrictions (within reason).

E. What are the Competitive Business Interests at Issue?

The specific parameters of the noncompete restriction should be driven by the business interests sought to be protected. Consider the relevant industry. If the field is highly technical, the noncompete restriction will likely be geared towards protecting trade-secret and confidential information; if the industry involves client services, protecting client relationships and goodwill may be the primary driver. Identify whether the business operates in a highly-competitive market, and which geographical markets it conducts activity in. Consider whether the business has plans to expand outside of its current market and whether competition in a distant market would harm the business. Additionally, look at the party who will be bound to the restriction—if a lower-level employee who lacks access to confidential information, the noncompete may need to be narrower; if a high-level executive with customer relationships and knowledge of confidential and/or trade-secret information, perhaps a broader noncompete is appropriate. Ask how the employer would be harmed if the other party goes to work for a competitor.

F. Should the Party Imposing the Restriction Draft as Broadly as Possible?

Setting side other considerations, like industry and party sophistication, there is no clear answer as to whether the party seeking to impose a noncompete restriction should draft the provision as broadly as possible or draft a more narrowly tailored provision. Advantages of taking an "as broad as possible" approach to drafting include protecting the employer from a broader range of potentially competitive activities, increasing the likelihood of protecting the employer against then-unforeseen events. Additionally, if the court deems the provision unreasonable, the court may reform, rather than void, the provision. On the other hand, the broad approach opens the drafter up to more pushback during negotiations, and courts are not required to reform a provision and may void it altogether.

The drafter should consider including a "blue pencil" paragraph explicitly stating that the noncompete may be reformed by a court should it find the restriction unreasonable. While this does not guarantee that a court *will* reform an overbroad provision, adding such a paragraph may help demonstrate to a court that the parties contemplated reformation when they formed the agreement (perhaps providing reassurance to reform versus voiding). The drafter could also consider including separate consideration for the noncompete.

G. What Other Restrictive Covenants Should Be Included?

Given the uncertainty of the future of noncompete agreements, drafters should consider whether to use a combination of nonsolicitation, nondisclosure, and noncircumvention provisions in addition to or in lieu of a noncompete provision. These covenants together may accomplish nearly the same result as a noncompete but are less likely to be held unenforceable in the future. Moreover, these provisions are subject to less judicial scrutiny since they inherently impose less restrictions on an individual's ability to work than noncompete covenants.

H. What Remedies Should Be Included?

The party seeking to impose the noncompete restriction will presumably seek to obtain injunctive relief if the other party begins engaging in prohibited competitive activity. Drafters should include an acknowledgement by the other party that breach of the noncompete covenant will cause the employer or business to suffer irreparable harm for which there is no adequate legal remedy. In certain contexts, like the medical field, a court may be apprehensive about an injunction out of concern for the public interest.

Drafters should also consider whether a liquidated damages provision is appropriate. Including such a clause is particularly advisable in situations where a court is less likely to grant an injunction. The amount of damages specified must be reasonable as to the injury the employer would suffer from a breach.

Conclusion

To be enforceable, noncompete agreements must be reasonable in geographic scope, duration, and the specific line of business. It is important to keep in mind that what is reasonable in certain contexts may not be reasonable in others and to carefully consider the circumstances. Drafters should also stay informed of state and federal developments on the enforceability of noncompete agreements.

To be enforceable, noncompete agreements must be reasonable in geographic scope, duration, and the specific line of business.

NOTES

1. 27 Mich 15, 19 (1873).
2. *Id.*
3. *See, e.g., Bristol Window & Door, Inc v Hoogenstyn*, 250 Mich App 478, 491, 650 NW2d 670 (2002).
4. *Id.* at 491-492.
5. *See, e.g., Thermatool Corp v Borzym*, 227 Mich App 366, 372, 575 NW2d 334 (1998); *Coates v Bastian Bros, Inc*, 276 Mich App 498, 506, 741 NW2d 539 (2007).
6. *Id.* at 492.
7. MCL 445.784(2).
8. MCL 445.774a(1).
9. MCL 445.774a(1).
10. MCL 445.774a(2).
11. 499 Mich 491, 513-515 (Mich 2016).
12. *Id.* at 513-514.
13. *Id.* at 514-515.
14. *St Clair Med, PC v Borgiel*, 270 Mich App 260, 266, 715 NW2d 914 (2006); *see also Follmer, Rudzewicz & Co, PC v Kosco*, 420 Mich 394, 402, n 4, 362 NW2d 676 (1984).
15. *Certified Restoration Dry Cleaning Network, LLC v Tenke Corp*, 511 F3d 535, 547 (6th Cir 2007).
16. *St Clair Med*, 270 Mich App at 266.
17. *Coates*, 276 Mich App at 507.
18. *Id.* at 508.
19. *St Clair Med*, 270 Mich App at 262.
20. *Id. at 268*.
21. 130 F Supp 3d 1122, 1129, 1141 (ED Mich 2015).
22. *Id.* at 1140-1141.

23. *Midfield Concession Enters, Inc*, 130 F Supp 3d at 1140.

24. *St Clair Med*, 270 Mich App at 268.

25. 276 Mich App 146, 158–59 (2007).

26. 2000 WL 156821, at *3 (ED Mich Jan 20, 2000).

27. 130 F Supp 3d at 1140.

28. *See, e.g., St Clair Med*, 270 Mich App at 269; *Capaldi v LiftAid Transport, LLC*, 2006 WL 3019799, at *4 (Mich App Oct 24, 2006) (citing *Superior Consulting Co, Inc v Walling*, 851 F Supp 839, 847 (ED Mich 1994)).

29. *Superior Consulting Co v Walling*, 851 F Supp 839, 847 (ED Mich 1994).

30. 457 F Supp 2d 806, 808, 813 (WD Mich 2006).

31. *See, e.g.*, *Rooyakker & Sitz, PLLC*, 276 Mich App at 158–59 ("And while the clause failed to specify a geographic area, [MCL 445.774a(1)] provides for the limiting of noncompetition clauses to render them reasonable.").

32. *See Coates*, 276 Mich App at 506-08; *see also Certified Restoration Dry Cleaning Network*, 511 F3d at 547.

33. 2014 WL 4495207, at *3 (Mich Ct App Sept 11, 2014).

34. *Superior Consulting Co*, 851 F Supp at 847.

35. *Superior Consulting Co.*, 851 F Supp at 847, citing *Telxon Corp v Hoffman*, 720 F Supp 657 (ND Ill 1989).

36. *See, e.g.*, *Huron Tech*, 2014 WL 4495207, at *3; *Whirlpool Corp*, 457 F Supp 2d at 813.

37. *Coates*, 276 Mich App at 508.

38. 262 Mich App 592, 594 (2004) (citing *Robert Half Int'l, Inc v Van Steenis*, 784 F Supp 1263, 1273 (ED Mich 1991)).

39. *Innovation Ventures*, 499 Mich at 509 ("[W]e have recognized a failure of consideration when one party has committed a first, substantial breach of a contract and sought to maintain an action against the other party for a subsequent failure to perform.").

40. *See, e.g.*, *Ward v American Mut Liab Ins Co*, 15 Mass App Ct 98, 101, 443 NE2d 1342 (1983).

41. *See, e.g., id*; *Coates*, 276 Mich App at 510.

42. *Coates*, 276 Mich App at 510.

43. *See, e.g.*, *Matthews-Hargreaves Chevrolet, Co v DeSantis*, 2024 WL 2499110 (Mich Ct App May 23, 2024); *Med-Health Sys Corp v Kerr*, 2001 WL 792405 (Mich Ct App Jan 9, 2001); *Superior Consulting Co*, 851 F Supp at 846.

44. *See Perceptron, Inc v Sensor Adaptive Machs, Inc*, 221 F3d 913, 923 (6th Cir 2000) (applying Michigan law).

45. *St Clair Med*, 270 Mich App at 270-71.

46. MCL 445.774a(1).

47. *See, e.g.*, *Superior Consulting Co.*, 851 F Supp at 847 (reforming noncompete provision's prohibition on type of employment from working in any capacity for a competitor to engaging in consulting and management work for a competitor); *Calder Dev Assocs, Inc v Knuth*, 2004 WL 2102028, at *3 (Mich Ct App Sept 21, 2004) (affirming trial court's decision to restrict subject matter of noncompete).

48. *E.g.*, *Your Home Town USA, Inc v Creative Graphics, Inc*, 2007 WL 778569, at *4 (Mich Ct App Mar 15, 2007) (refusing to reform noncompete where "it would take a wholesale rewriting of the agreement" to render it enforceable); *A Complete Home Care Agency, Inc v Gutierrez*, 2004 WL 1459450, at *2 (Mich Ct App June 29, 2004) (trial court did not err by voiding rather than reforming noncompete); *Whirlpool Corp*, 457 F Supp 2d at 813 (noncompete was overbroad and thus invalid as applied to defendant).

49. In 2015, State Representative Peter Lucido introduced HB 4198. HB 4198, 2015 HJ 14, 137, https://capitol.legislature.mi.gov/documents/2015-2016/Journal/House/pdf/2015-HJ-02-12-014.pdf. In 2016 and 2017, Representative Lucido introduced HB 5311 and HB 4755. HB 5311, 2016 HJ 10, 134 https://legislature.mi.gov/documents/2015-2016/Journal/House/pdf/2016-HJ-02-03-010.pdf; HB 4755, 2017 HJ 57, 1036, https://www.legislature.mi.gov/documents/2017-2018/Journal/House/pdf/2017-HJ-06-14-057.pdf.

50. HB 4399, 2023 HJ 31, 421, https://www.legislature.mi.gov/documents/2023-2024/Journal/House/pdf/2023-HJ-04-12-031.pdf.

51. *Ryan, LLC v Federal Trade Comm'n*, 746 F Supp 3d 369, 389 (ND Tex 2024).

52. *See Total Quality, Inc v Fewless*, 332 Mich App 681, 695, 958 NW2d 294 (2020).

53. *See, e.g.*, *Apex Tool Grp, LLC v Wessels*, 119 F Supp 3d 602, 607 (ED Mich 2015); *Kelly Servs, Inc v Noretto*, 495 F Supp 2d 645, 656–57 (ED Mich 2007); *Gene Codes Corp v Thomson*, 2011 WL 611957, at *10 (ED Mich Feb 11, 2011).

54. *Total Quality*, 332 Mich App at 699–700; *but see Gen Med of Illinois Physicians, PC v Ampadu*, 2023 WL 7457468, at *20 (Mich Ct App Nov 9, 2023) (*Total Quality* court did not hold that MCL 445.774a(1) is inapplicable to nonsolicitation clauses and trial court did not err in analyzing both a noncompete and nonsolicitation provision under the statute).

55. *See Hayes-Albion v Kuberski*, 421 Mich 170, 184, 364 NW2d 609 (1985) (information about needs of particular clients "is not a trade secret at common law, [but] an employer may have a protectable interest in information about client needs that an employee gains by virtue of his employment."); *see also Certified Restoration Dry Cleaning Network*, 511 F3d at 547 ("Reasonable covenants may protect such legitimate interests as trade secrets, confidential information, close contact with the employer's customers or customer lists, or cost factors and pricing.

56. See https://www.icle.org/modules/formbank/index.aspx.

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