

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: HB330

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: VanValkenburg

3. Committee: Passed Both Houses

4. Title: Employment; covenants not to compete; low-wage employees; civil penalty.

5. Summary: This bill prohibits an employer from entering into, enforcing, or threatening to enforce a covenant not to compete between the employer and a low-wage employee. The employer is subject to a civil penalty of \$10,000 per violation. The bill defines "low-wage employee" as either (i) an employee, intern, student, apprentice, or trainee whose average weekly earnings are less than the average weekly wage of the Commonwealth or who is employed without pay or (ii) an independent contractor who is compensated for his services at an hourly rate that is less than the median hourly wage for the Commonwealth for all occupations as reported by the Bureau of Labor Statistics of the U.S. Department of Labor. The bill provides that, "low-wage employee" shall not include any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses paid to the employee by the employer. The bill defines "covenant not to compete" as an agreement that restrains, prohibits, or otherwise restricts an individual's ability to compete with his former employer. The bill allows any low-wage employee subject to such a covenant not to compete to bring a civil action against an employer and seek appropriate relief, including enjoining the conduct of any person or employer, ordering payment of liquidated damages, and awarding lost compensation, damages, and reasonable attorney fees and costs. The bill requires all employers to post in the workplace a notice of the prohibition or a summary of the notice approved by the Department of Labor and Industry and provides that an employer is subject to a warning for a first offense and to a civil penalty for a subsequent offense for failure to post such notice or approved summary. The provisions of the bill are applicable to covenants not to compete entered into on or after July 1, 2020.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Final, see item 8.

8. Fiscal Implications: Any expenditure or revenue impact that may result from this bill is indeterminate. The number of complaints the Department of Labor and Industry's (DOLI) Labor Law Division may receive and investigate as a result of the provisions of this bill are unknown. DOLI anticipates that the department may have to notify employers alleged to have violated the provisions of this bill. The bill establishes two new civil penalties for violations of its provisions. Any revenue collected will be deposited to the general fund.

Any general fund revenue collected as a result of these new civil penalties will depend on the number of violations.

Currently, DOLI's Labor Law Division does not collect penalty revenue. Depending on the number of potential violations, DOLI may require additional staff and IT services to support and conduct these activities.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry, courts.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is the companion to SB480.