

Department of Planning and Budget 2019 Fiscal Impact Statement

1. Bill Number: SB1387

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input checked="" type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Wagner

3. Committee: Commerce and Labor

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

5. Summary: 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 measure 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 bill's 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.

6. Budget Amendment Necessary: No. See Item 8, below.

7. Fiscal Impact Estimates: Preliminary. See Item 8.

8. Fiscal Implications: The fiscal impact to the Department of Labor and Industry (DOLI) is indeterminate as this bill requires DOLI to enforce this provision. While the bill provides an enforcement provision for impacted low-wage employees to go to court, DOLI would have enforcement responsibilities for ensuring posting of the required notices and determination of penalties for violations of the law. Currently, DOLI's Virginia Occupational, Safety and Health (VOSH) program inspects for failure to post required injury and illness data or the job safety and health poster. It is anticipated that this new posting provision can be absorbed within VOSH's current inspection requirements. The number of inquiries concerning the new posting requirement and potential violations that DOLI would need to respond to are indeterminate. There are approximately 290,000 employers in the Commonwealth.

The amount of civil penalties that may be collected is indeterminate. DOLI's VOSH program cites six to 10 employers yearly for failure to post required injury and illness data or the job safety and health poster. It is anticipated that a negligible amount of revenue would be generated from the failure to post the required notices. Any revenue would be deposited to the general fund.

It is anticipated that any expenditure impact as a result of this bill can be absorbed by the court system.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry; court system.

10. Technical Amendment Necessary: No.

11. Other Comments: None.