



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Final Fiscal Note

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<b>Drafting Number:</b>	LLS 22-0956	<b>Date:</b>	August 1, 2022
<b>Prime Sponsors:</b>	Rep. Tipper Sen. Bridges	<b>Bill Status:</b>	Signed into Law
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**Bill Topic:**                   **RESTRICTIVE EMPLOYMENT AGREEMENTS**

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<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill prohibits certain restrictive post-employment agreements. It may increase state revenue and state and local workload on an ongoing basis beginning in FY 2022-23.

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**Appropriation Summary:**           No appropriation is required.

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**Fiscal Note Status:**                The fiscal note reflects the enacted bill.

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## Summary of Legislation

This bill creates a new factual basis for the existing class 2 misdemeanor offense of employee intimidation by adding covenants not to compete to the basis. It creates certain exceptions, including an exception for highly compensated workers where the covenant pertains to the protection of trade secrets and is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets.

Additionally, the following covenants are permitted:

- a provision for an employer's recovery of education and training-related expenses that are distinct from normal, on-the-job training;
- a reasonable confidentiality provision relevant to the employer's business;
- a covenant for the purchase and sale of a business or its assets; and
- a provision requiring the repayment of a scholarship for an apprentice if the individual fails to comply with the conditions of the scholarship agreement.

Notice and terms of the covenant not to compete must be provided to a prospective work, among other provisions.

The bill prohibits an employer from entering into, presenting to a worker or prospective worker as a term of employment, or attempting to enforce any covenant not to compete that is void under the bill. An employer who violates this provision is subject to a penalty of \$5,000 for each, worker or prospective worker, injunctive relief, and actual damages.

## Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

**Prior conviction data and assumptions.** This bill creates a new factual basis for the existing class 2 misdemeanor offense of employee intimidation by adding covenants not to compete to the basis. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for this offense; therefore, the fiscal note assumes that there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## State Revenue

The bill may increase state revenue from fines on employers and court-related fees and fines. Any impact is expected to be minimal. This revenue is subject to TABOR.

## State Expenditures

The bill increases state workload in the Department of Labor and Employment (CDLE), the Department of Law (DOL), the Department of Personnel and Administration (DPA), and the Judicial Department.

**Department of Labor and Employment.** The bill gives the Division of Labor Standards and Statistics authority to bring actions in court. Use of this authority is expected to happen on an as-needed basis, and no change in appropriations is required.

**Department of Law.** The DOL will provide support to CDLE as needed. Additionally, the Attorney General may bring actionable items to court. It is assumed that tips received for potential violations of the Consumer Protection Act will be assessed and prioritized based on merit and available resources. No change in appropriations is required.

**Department of Personnel and Administration.** The department will review its existing policies to ensure compliance with the bill. No change in appropriations is required.

**Judicial Department.** Trial court workload may increase as the Attorney General, CDLE, and any employee may bring an action for injunctive relief and actual damages. It is anticipated the volume of cases generated as a result of this proposed legislation will be minimal and can be handled within existing resources.

## Local Government

Similar to the state, workload will increase for local governments to review existing policies and ensure compliance with the bill.

## Effective Date

The bill was signed into law by the Governor on June 8, 2022, and takes effect on August 9, 2022, assuming no referendum petition is filed. It applies to covenants not to compete entered into or renewed on or after the applicable effective date of this act.

## State and Local Government Contacts

Information Technology  
Law

Judicial  
Personnel

Labor  
Regulatory Agencies