

States with Pending Legislation to Ban Employee Noncompetes: Maine Poised to be Next State to Enact a Ban

Article By:

John R. FitzGerald

Pauline R. Wizig

[As we continue to report](#), noncompete agreements are an area of ever-increasing scrutiny and limitation. Last year we wrote about [states with civil and criminal penalties for violations of noncompete law](#), which is just one aspect of the continuing trend toward restricting employee noncompete agreements.

Some states have gone a step further and banned such agreements (with some limited exceptions). As of now, four states have bans: California, Minnesota, North Dakota, and Oklahoma.* We expect this list to grow in 2024. The only question is which state will be next. Currently, six states (and New York City) have pending legislation that, if enacted as written, would ban employee noncompete agreements — Illinois, Maine, Massachusetts, Michigan, New York City, Rhode Island, and Wisconsin. Of these, Maine is poised to be the next state to enact a ban.

- **Illinois:** [H.B. 5385](#) would amend the Illinois Freedom to Work Act and make “covenant[s] not to compete,” as the term is defined in the Act, unenforceable. The ban would not apply to several types of agreements, including: (i) nonsolicitation agreements, (ii) sale-of-business noncompete agreements, and (iii) agreements prohibiting the use or disclosure of trade secrets or inventions, among many others. Not only would the bill ban noncompete agreements with Illinois employees, it would further state that a noncompete agreement: “is illegal and void regardless of where and when the [agreement] was entered into” and that “[a]n employer or former employer shall not attempt to enforce a contract that is void and unenforceable under this Act regardless of whether the contract was signed and the employment was maintained outside of [Illinois].” In addition, the bill contains a notice provision that would require employers to notify employees, as well as former employees who were employed after January 1, 2023, in writing on or by April 1, 2025, that noncompete agreements are void and unenforceable. H.B. 5385 was introduced and referred to the Rules Committee on February 9, 2024.
- **Maine:** [H.P. 951](#) would ban all employee noncompetes with three limited exceptions: (i) when a business is sold, (ii) when an LLC shareholder sells or disposes of all of his shares, and (iii) when a partnership is dissolved. The bill — which would not be retroactive — would also invalidate out-of-state choice-of-law provisions. In addition to banning noncompete

agreements, the bill would require employers to display workplace posters notifying employees of the ban. Violating the law could subject employers to a \$5,000 civil penalty. The bill has passed in the House and the Senate; it was sent to Governor Janet Mills' desk on March 19, 2024. She is expected to sign the bill into law.

- **Massachusetts:** Despite already strictly curtailing the use of noncompete agreements, Massachusetts looks to further restrict these covenants. [S.B. 1192](#) would make “noncompetition agreements,” as the term is defined in [Section 24L of Chapter 149 of the General Laws](#), void and unenforceable. The ban would not apply to several types of agreements listed in Section 24L of Chapter 149 of the General Laws, including: (i) employee or customer nonsolicitation agreements, (ii) sale-of-the-business noncompete agreements, and (iii) nondisclosure or confidentiality agreements, among many others. Most recently, on March 4, 2024, the bill was referred to the Committee on Senate Rules.
- **Michigan:** [H.B. 4537](#) would ban any agreement that “prohibits the employee from engaging in employment or a line of business after termination of employment.” There has been no activity on this bill since May 2023, when it was referred to the Committee on Labor.
- **New York City:** [Int. No. 140](#) would ban employers from entering into noncompete agreements with workers (which includes both employees and independent contractors) in New York City. The bill is written broadly and does not specify what connection a worker must have to New York City to fall within the purview of the law. For example, it is unclear whether an employee must be “based in” New York City, or whether it is sufficient to “work in” New York City. The law would be retroactive, cancelling noncompete agreements entered into before the law takes effect. The law would impose a civil penalty of \$500 per violation. The most recent activity on this proposed bill occurred on February 28, 2024, when it was referred to the Committee on Consumer and Worker Protection.
- **Rhode Island:** [HB 8059](#) would make noncompete agreements unenforceable against employees, except in the sale-of-business context. The Rhode Island House introduced the bill and referred it to the House Labor Committee on March 13, 2024. HB 8059 is identical to [SB 0888](#), which was passed by the Rhode Island Senate during the 2023 legislative session but died before it was referred to the Rhode Island House.
- **Wisconsin:** [AB 481](#) would make employee noncompete agreements void. The prohibition would not apply to nondisclosure agreements. It also would not apply to noncompete agreements that are limited to “prohibiting or restricting the unauthorized use of a customer list or intellectual property owned or licensed by the employer,” but it seems that the bill would otherwise restrict nonsolicitation covenants that do not rely on the misuse of proprietary information. The bill would require employers to display workplace posters notifying employees that noncompete agreements are illegal. The last activity on this proposed bill occurred on October 12, 2023, when it was read for the first time and referred to the Committee on Labor and Integrated Employment.

Employers expecting to enter noncompete agreements with employees in the above-listed states should work with counsel to consider the implications of the pending legislation, if any. This is a rapidly evolving area of noncompete law as more state legislatures (and the federal government) consider bans and other limits on employee-based noncompete agreements, including fines for companies that violate the law. It is anticipated that other state legislatures may propose similar bans in the near future. We will continue to monitor and report on developments in this area of the law.

*Although Mont. Code Ann. § 28-2-703 (enacted in 1895), reads like a ban on noncompete agreements, Montana courts enforce such agreements so long as they are carefully drafted to conform to the various state-specific requirements set forth in Montana's common law.

National Law Review, Volume XIV, Number 85

Source URL: <https://natlawreview.com/article/states-pending-legislation-ban-employee-noncompetes-maine-poised-be-next-state>