



# California Dreaming: Pennsylvania's Proposed “Freedom to Work Act” Aims to Join California in Banning Non-Compete Agreements

Insights

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Late last year, Pennsylvania legislators introduced House Bill 1938, the “Freedom to Work Act” (the “Act”), an outright ban on “covenant[s] not to compete” in Pennsylvania. Under the Act, “a covenant not to compete is illegal, unenforceable and void as matter of law.”

## Scope of the Prohibition

The proposed Act defines a “covenant not to compete” as “[a]n agreement between an employer and employee that is designed to impede the ability of the employee to seek employment with another employer.” The Act’s narrow definition would still allow Pennsylvania employers to enter into non-solicitation agreements with its employees.

Further, the Act does not apply retroactively. Thus, employers would still be able to enforce covenants not to compete in effect at the time of the Act’s passage provided they are reasonable under existing Pennsylvania law. The Act does, however, prohibit the renewal of such covenants.

## Limited Exceptions

The Act does allow covenants not to compete in limited scenarios. Specifically, the Act does not prohibit covenants not to compete: (1) involving the sale of a business or goodwill; (2) involving a dissolution or disassociation of a partnership or limited liability company; or, as noted above, (3) that are entered into prior to the effective date of the Act. It is important to note that the Act only allows for the enforceability of these covenants if they are reasonable under Pennsylvania law.

## Incentives for Employees to Sue

The Act provides financial incentives for employees subject to covenants not to compete after enactment of the Act to bring lawsuits against their employers. Employees who “prevail[] in a suit related to the enforcement of a covenant not to compete” shall: (1) “[r]eceive an award of attorney fees; and (2) “[b]e entitled to damages, including punitive damages.” Interestingly, the Act’s use of “shall” implies that the award of attorney’s fees and damages are automatic.

## No Forum Shopping

The Act also prohibits forum-shopping and other workarounds by requiring any “dispute arising out of or related to a covenant not to compete involving a resident of [the] Commonwealth” to be “[e]xclusively decided by a State court within [the] Commonwealth” and governed by Pennsylvania law.

### **Takeaways**

Whether the Pennsylvania Legislature ultimately passes the Act (in one form or the other) remains uncertain. However, if the Act passes, Pennsylvania employers should review their agreements with employees and consider protecting their goodwill and trade secret information through other means, such as non-solicitation or confidentiality agreements.

We will continue to monitor developments and provide updates as they are available.

As always, please consult your Fisher Phillips attorney with any questions.