

## Massachusetts Governor Wants to Ban Non-Compete Agreements and Enact the Uniform Trade Secrets Act

Insights

4.21.14



Massachusetts Governor, Deval Patrick, recently announced a bill - An Act to Promote Growth and Opportunity—that would provide workforce training opportunities and promote economic development incentives across the Commonwealth. As part of his economic development package, the Governor proposes to enact the Uniform Trade Secrets Act, but at the same time eliminate traditional non-competition agreements.

The proposed bill (which is not the first non-compete legislation in recent Massachusetts history) prohibits any contract that would in any way restrict an employee's, or independent contractor's, ability to seek employment with any other employer after termination of the employment or independent contractor relationship. The bill provides that:

"Any written or oral contract or agreement arising out of an employment or independent contractor relationship that prohibits, impairs, restrains, restricts, or places any condition on, a person's ability to seek, engage in or accept any type of employment or independent contractor work, for any period of time after an employment or independent contractor relationship has ended, shall be void and unenforceable with respect to that restriction."

Noting that several legislators have introduced bans on non-competition agreements in the past, Governor Patrick compared Massachusetts to California, which also has a ban on non-competition

agreements, and stated that he wanted to enable the same unrestricted free flow of talent in Massachusetts' own "innovation hub." However, the Governor recognized that some employers will resist eliminating non-competition agreements. He believes these employers' concerns about former employees using proprietary information can be addressed by adopting the Uniform Trade Secrets Act. Many other states have adopted a version of the Uniform Trade Secrets Act, which prohibits the disclosure and misappropriation of defined trade secrets and provides remedies for violations such as injunctive relief, exemplary damages, and attorney's fees.

In addition to proposing to enact the Uniform Trade Secrets Act and banning non-competition agreements, the bill specifically preserves other types of post-employment restrictions on departing employees, including (1) covenants not to solicit or hire other employees of the employer; (2) covenants not to solicit or transact business with customers of the employer; (3) non-disclosure agreements; (4) non-competition agreements made in connection with the sale of a business; (5) non-competition agreements "outside of an employment relationship"; and (6) agreements under which an employee agrees not to reapply for employment with the same employer after termination. By its terms, the bill would apply to all agreements, including non-competition agreements executed before the effective date of the legislation.

We recommend that you use the pendency of this bill as an opportunity to review your existing post-employment restrictive covenants and assess which provisions might be affected by this proposed legislation. You may want to separate out or consider alternative provisions that restrict a former employee's ability to solicit your customers, as opposed to an outright ban on competing or joining a competitor after termination. In the event this bill passes and you use non-competition agreements, you will need to consider alternative, but effective, non-solicitation and confidentiality agreements so that you can continue to protect your valuable proprietary information and customer goodwill.

## ***Related People***

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