



Michigan Bankers Association

Memo

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To: **Members of Michigan House Commerce & Tourism Committee**  
From: **Alexander J. Morris, Advocacy Manager**  
Date: **1/16/2020**  
Re: **HB 4874 - Opposed**

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The Michigan Bankers Association (MBA) opposes HB 4874(H-1). While we appreciate the proposed substitute which addressed some of our concerns that we have shared, there remains some major shortcomings that still seek resolution.

- **Restriction of Non-Compete Agreements to Low Wage Employees:** While we recognize some potential reasons to consider limiting non-compete agreements required by low wage employees in certain circumstance for certain reasons, we believe that choice is most appropriately made by the business in the context of their business model, competitors, and current state of their industry. Most banks do not require non-compete agreements for low wage employees, however many jobs in a bank, including positions like tellers and personal bankers, must often be privy to proprietary information of their employer in order to do their job. Like many other business sectors, each bank has unique strategies and concepts that drive day-to-day operations.
- **Failure to Notify Penalty:** We believe the penalty associated with failure to notify applicants in writing prior to their interview of a possible non-compete agreement places an unequitable burden to an already over-burdened human resources function. To void a non-compete agreement altogether for a failure to notify in writing is a penalty that is not commensurate with the offense.
- **One-Way Mandatory Attorney Fee Provision:** Language on page 3 lines 5 & 6 and subsequent sections a) and b) establish a one-way mandatory attorney fee provision. Under this legislation, it is possible that if a court chooses to change a non-compete agreement in ways that have no immediate impact, the business would still be responsible for significant cost. For example, should a court wish to reduce the duration of a non-compete (say from 2 years to 1) but holds that all other aspects of the agreement are appropriate, which happens frequently, the employer may be required under this legislation to pay the ex-employee damages, fees, and court costs in whole. On the other hand, if an employer is successful in enforcing an appropriate non-compete, they do not have the right to recover their costs.

Until these issues have been resolved, we remain opposed to HB 4874 and urge you to vote against reporting the bill to the House Ways & and Means Committee. Thank you for your consideration of our concerns.