MICHIGAN'S NON-COMPETE DEBATE: BALANCING EMPLOYER AND EMPLOYEE INTERESTS

Chelsea A. Maslar[†]

INTRODUCTION

Today, non-compete clauses ("non-competes")—largely favoring employers—are often an integrated part of Michigan's employment contracts.[1] Michigan courts continually uphold and enforce non-competes.[2] However, recent non-competes in Michigan have been subject to debate because of the many disadvantages such clauses pose to employees.[3] This Note discusses how these disadvantages of having and enforcing non-compete clauses outweigh the benefits to employers. As a result—in order to protect its employees—Michigan should reform its non-compete law.

Michigan should adopt a nuance of California's non-compete law. California typically does not enforce non-compete clauses based on a rationale of public policy in favor of employees' interests.[4] California's courts have continually stated that employees' interests of mobility and betterment outweigh employers' interests against competition.[5] However, despite California's general rule of unenforceability, the state has enforced minor statutory and common law exceptions.[6]

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† Ave Maria School of Law, Juris Doctor Candidate (2017); Aquinas College, Bachelor of Science (2013). I am truly thankful to my family for their love and support, and to the staff of the Ave Maria Law Review. I want to give a special thank you to Professor Jones who has given me guidance and feedback throughout the creation of my Note

1. Jon Zemke, *To Compete or Non-Compete: Contracts That Make Michigan Less Competitive*, CONCENTRATE (Apr. 9, 2014), www.secondwavemedia.com/concentrate/features/Non-CompeteContracts0278.aspx; *Noncompete Agreement*, WEST'S ENCYCLOPEDIA OF AMERICAN LAW (2d ed. 2008), http://legal-dictionary.thefreedictionary.com/Noncompete+Agreement.

2. Zemke, *supra* note 1.

3. *See* On Amir & Orly Lobel, *Driving Performance: A Growth Theory of Noncompete Law*, 16 STAN. TECH. L. REV. 833, 836 (2013).

4. *See* Edwards v. Arthur Anderson L.L.P., 189 P.3d 285, 290–91 (Cal. 2008) (citing D'Sa v. Playhut, Inc., 102 Cal. Rptr. 2d 495, 499 (Cal. Ct. App. 2000)).

5. *D'Sa*, 102 Cal. Rprt. 2d at 499 (citing Diodes, Inc. v. Franzen, 67 Cal. Rptr. 19, 26 (Cal. Ct. App. 1968)).

6. *See generally* Bradford P. Anderson, *Complete Harmony or Mere Detente? Shielding California Employees from Non-Competition Covenants*, 8 U.C. DAVIS BUS. L.J. 8 (2007).

This Note is divided into three main parts. Part I provides an overview of the non-compete clause. Part II focuses on how courts in Michigan treat non-compete clauses today, and emphasizes the enforceability of such clauses. Next, this Note discusses the differences between California's and Michigan's treatment of non-compete clauses, focusing on the unenforceability of such clauses. This Note then identifies and explains Michigan's current non-compete debate. In particular, this section discusses the advantages and disadvantages of enforcing non-compete clauses in Michigan. This Note then introduces Michigan's House Bill 4198 as a current response to the non-compete-clause debate. In Part III, after identifying Michigan's current solution to an unreasonable non-compete clause, this Note argues that non-compete clauses in Michigan should be unenforceable, unless complying with California's three minor statutory exceptions. Finally, Part III discusses why this solution is ideal and practical in protecting the interests of both Michigan's employers and employees.

I. THE NON-COMPETE CLAUSE: A BRIEF OVERVIEW

A non-compete clause is a form of restrictive agreement between an employer and employee that (1) prohibits an employee "from revealing proprietary information about the company to competitors or other outsiders," or (2) prevents a former employee from "competing with [his or her] ex-employer for a certain period of time after leaving the company."[7] Usually, this period of time ranges from one to two years.[8] To prevent competition, a valid non-compete clause is thorough with respect to defining a set geographic area in miles and the type of prohibited activity in which an employee must refrain from.[9] A non-compete clause may also be referred to as a "confidentiality or nondisclosure agreement or, simply, [a] non-compete agreement."[10] Such clauses usually "define confidential information, identify ownership rights, and detail employee obligations to ensure that confidentiality is maintained."[11] Many small businesses use non-competes to prevent a former employee from using their company secrets or clients to "start their own competing business or join an existing competitor in the area."[12]

7. *Non Competition Agreements Law & Legal Definition*, USLEGAL, http://definitions.uslegal.com/n/non-competition-agreements (last visited Jan. 11, 2016).

8. Zemke, *supra* note 1.

9. *Id.*

10. *Non Competition Agreements Law & Legal Definition*, *supra* note 7.

11. *Id.*

12. *Id.*

Generally, non-competes are utilized when expertise or an established group of customers are particularly important to the organization.[13] Recently, however, non-competes have expanded into different business ventures.[14]

Non-compete clauses have grown in frequency because such clauses protect an employer's self-interest.[15] Specifically, an employer has an interest in preventing the threat of competition by protecting a business owner's investment.[16] An employer seeks to protect his or her "customer base, trade secrets, and other information vital to [his or her] success."[17] The idea is that an employer normally invests a significant amount of time in employee training.[18] Therefore, an employer does not want to train an employee who will turn around and seek employment elsewhere.[19] Thus, in order to protect the employer's self-interest, he or she will typically require an employee to sign a non-compete during the hiring process.[20]

Despite the expansion of non-compete clauses, states disagree on whether non-compete clauses should be enforceable.[21] The United States Federal Government left the decision of enforcing such clauses to the states as a policy determination.[22] Michigan, among a majority of states, enforces non-compete clauses.[23] California, among a number of states, strictly does not enforce non-compete clauses.[24] Most famously, California has restricted such clauses since it has been incorporated as a state.[25]

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13. *Noncompete Agreement*, *supra* note 1.

14. *See* Cory A. Ciocchetti, *Tricky Business: A Decision-Making Framework for Legally Sound, Ethically Suspect Business Tactics*, 12 CARDOZA PUB. L. POL'Y & ETHICS J. 1, 58 (2013); Zemke, *supra* note 1.

15. *See generally* Kyle B. Sill, *Drafting Effective Noncompete Clauses and Other Restrictive Covenants: Considerations Across the United States*, 14 FLA. COASTAL L. REV. 365 (2013); *Noncompete Agreement*, *supra* note 1.

16. *Noncompete Agreement*, *supra* note 1.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*; Griffin Toronjo Pivateau, *Putting the Blue Pencil Down: An Argument for Specificity in Noncompete Agreements*, 86 NEB. L. REV. 672, 675 (2008).

21. *See generally* Robert W. Gomulkiewicz, *Leaky Covenants-Not-to-Compete as the Legal Infra-structure for Innovation*, 49 U.C. DAVIS L. REV. 251 (2015).

22. Matt Marx & Lee Fleming, *Non-Compete Agreements: Barriers to Entry . . . and Exit?*, 12 NAT'L BUREAU OF ECON. RESEARCH: INNOVATION POLICY AND ECONOMY 39, 43 (Josh Lenner & Scott Stern eds. 2012), available at http://www.nber.org/chapters/c12452.

23. *Id.* at 43–44.

24. *Id.* at 44.

25. *Id.*

A. *Michigan's Non-Compete Law*

Thirty years ago, non-compete clauses in Michigan were unenforceable with minor exceptions.[26] Michigan's non-compete law changed in 1985 when Michigan's legislature "reformed non-compete law to bring the state largely within the majority of other states, effectively allowing them as long as the terms were reasonable and . . . designed to protect a valid competitive business interest."[27] The legislature reformed such law *inadvertently* by repealing a number of antitrust statutes, "one of which contained a little-noticed provision similar to California's Section 16600" (as discussed in Part I(B)).[28]

Today, courts in Michigan have interpreted non-compete clauses in favor of employers, i.e., in enforcing such clauses.[29] However, the party seeking enforcement, the employer, bears the burden of showing the validity of the non-compete clause.[30] A valid, enforceable non-compete clause in Michigan requires: (1) that the clause be "reasonably drawn as to duration, geographical scope, and line of business; and (2) [it must] protect the legitimate business interest of the party seeking enforcement."[31] Michigan does not set "bright-line rules" as to the duration or geographical scope; however, Michigan has implemented certain limitations on duration and scope.[32] Furthermore, Michigan analyzes a non-compete clause's reasonableness through several factors: "consideration supporting the contract, economic hardship on the employee, and whether the employer has reasonable competitive interests that need protection."[33] In relation to the second requirement needed to enforce a non-compete, "[l]egitimate business interests must include much more than a prohibition on competition."[34] In addition, the judge determines whether a

26. Kenneth J. Vanko, *Michigan Legislator Introduces Bill to Ban Non-Compete Agreements*, LEGAL DEVELOPMENTS IN NON-COMPETITION AGREEMENTS (Apr. 3, 2015, 8:46 AM), http://www.non-competes.com/2015/04/michigan-legislator-introduces-bill-to.html.

27. *See also* Follmer, Rudzewicz & Co., P.C. v. Kosco, 362 N.W. 676 (1984). Thereafter, the Michigan Legislature enforced non-compete clauses through the Michigan Antitrust Reform Act and the Michigan Uniform Trade Secrets Act. *See* MICH. COMP. LAWS ANN. § 445.774(a) (1987); MICH. COMP. LAWS ANN. § 445.1901 (1998).

28. Marx & Fleming, *supra* note 22, at 44; Viva R. Moffat, *The Wrong Tool for the Job: The IP Problem with Noncompetition Agreements*, 52 WM. & MARY L. REV. 873, 896 n.80 (2010).

29. *See* Zemke, *supra* note 1; MICH. COMP. LAWS ANN. § 445.774(a) (1987).

30. Innovation Ventures, L.L.C. v. Custom Nutrition Labs, L.L.C., No. 12-13850, 2015 U.S. Dist. LEXIS 129946, at *69 (E.D. Mich. Sept. 28, 2015 2015).

31. Apex Tool Grp., L.L.C. v. Wessels, 119 F. Supp. 3d 599, 607 (E.D. Mich. 2015).

32. *Innovation Ventures, L.L.C.*, 2015 U.S. Dist. LEXIS 129946, at *74; *Non Competition Agreements Law & Legal Definition*, *supra* note 7.

33. *Kelly Servs. v. Eidnes*, 530 F. Supp. 2d 940, 950 (E.D. Mich. 2008).

34. *Id.*

non-compete is reasonable—provided the material facts are undisputed.[35] Reasonableness is largely a fact-specific inquiry.[36] In summation, courts in Michigan are likely to enforce non-compete clauses if they satisfy Michigan's two-prong test of enforceability.[37]

Nonetheless, even if this two-prong test is not satisfied, courts in Michigan are willing to amend non-competes instead of finding such clauses unenforceable.[38] In a recent Michigan Court of Appeals case, the parties disputed a non-compete that prohibited the parties from using specific ingredients contained in an energy drink.[39] The second prong of the test was satisfied because the plaintiff had a legitimate business interest in protecting its "goodwill by preventing the use of the . . . ingredients."[40] However, despite meeting the second prong, the first prong was not satisfied because the court found the duration of the restrictions was unreasonable as it expanded over twenty years.[41] The Court, instead of finding the non-compete unenforceable, stated that a three-year time period was reasonable to protect the plaintiff's legitimate business interests, and, in turn, amended the non-compete.[42] Therefore, the Court of Appeals, after finding the non-compete did not satisfy both prongs of Michigan's non-compete test, still enforced the clause rather than ruling it unenforceable.[43]

To the contrary, a non-compete clause will be unenforceable if it prohibits mere competition.[44] For instance, in *Northern Michigan Title Company v. Bartlett*, the defendant worked for the plaintiff for a period of time in which he signed a non-compete clause.[45] He eventually left employment with the plaintiff and engaged in a related business.[46] The plaintiff brought suit alleging the defendant used the plaintiff's trade secrets to his advantage when he pursued employment elsewhere.[47] The Court found that the non-compete

35. *Innovation Ventures, L.L.C.*, 2015 U.S. Dist. LEXIS 129946, at *70.

36. *Id.*

37. Daniel Hegner, *Steering Clear of the Inevitable Disclosure Doctrine: Placing the Burden Where It Belongs*, 88 U. DET. MERCY L. REV. 611, 617 (2011).

38. *See generally Innovation Ventures, L.L.C.*, 2015 U.S. Dist. LEXIS 129946.

39. *Id.* at *74; *Non Competition Agreements Law & Legal Definition*, *supra* note 7.

40. *Innovation Ventures, L.L.C.*, 2015 U.S. Dist. LEXIS 129946, at *73.

41. *Id.* at *76.

42. *Id.* at *77.

43. *See id.*

44. *See* N. Mich. Title Co. v. Bartlett, No. 248751, 2005 Mich. App. LEXIS 733, at *4 (Mich. Ct. App. Mar. 15, 2005).

45. *Id.* at *1–2.

46. *Id.* at *2.

47. *Id.*

clause was unenforceable because the second prong was not met; specifically, the Court stated, "[a] legitimate business interest must be something greater than mere competition."[48] The non-compete clause that the defendant entered into entirely prohibited him from engaging in a related business.[49] Thus, the clause served to "protect [the] plaintiff from competition itself," and failed Michigan's legitimate business interest test.[50]

B. *California's Non-Compete Law*

In contrast to Michigan's non-compete law, California does not enforce non-compete clauses under its California Business and Professions Code Section 16600.[51] Section 16600 states, "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."[52] The statute "represents a strong public policy of the state" in protecting employees' interests.[53] "The public policy must involve a subject which affects the public at large rather than a purely personal or proprietary interest of the plaintiff or employer."[54] The purpose of the statute is to "ensure[] 'that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice.'"[55] An employee's interests "in his own mobility and betterment are deemed paramount to the competitive business interests of the employers, where neither the employee nor his new employer has committed any illegal act accompanying the employment change."[56] Furthermore, an employee does not have to know his or her rights under California Business and Professions Code Section 16600: it is foreseeable that an "employee will forego legitimate employment rather than assume the risk of expensive, time-consuming

48. *Id.* at *4.

49. *Id.* at *8–9.

50. *Id.* at *9.

51. *See* CAL. BUS. & PROF. CODE § 16600 (1941).

52. *Id.*

53. *See* Edwards v. Arthur Anderson, L.L.P., 189 P.3d 285, 293 (Cal. 2008) (quoting Scott v. Snelling & Snelling, Inc., 732 F. Supp. 1034, 1042 (N.D. Cal. 1990)).

54. D'Sa v. Playhut, Inc., 102 Cal. Rptr. 2d 495, 499 (Cal. App. 2000) (quoting Parada v. City of Colton, 29 Cal. Rprt. 2d 309, 312 (Cal. Ct. App. 1994)).

55. *Edwards*, 189 P.3d at 291 (quoting Metro Traffic Control, Inc. v. Shadow Traffic Network, 27 Cal. Rptr. 2d 573, 577 (Cal. Ct. App. 1994)).

56. *D'Sa*, 102 Cal. Rptr. 2d at 499 (quoting Diodes, Inc. v. Franzen, 67 Cal. Rptr. 19, 26 (Cal. Ct. App. 1968)).

litigation by the former employer."[57] For these primary reasons—in contrast to Michigan's non-compete law—California does not enforce non-competes.

In California, an employer cannot terminate an employee for refusing to sign a non-compete clause.[58] If an employer fires an employee for refusing to sign such a clause, the employer may be liable for wrongful termination.[59] This limitation on non-competes applies "even if such agreement contains choice of law or severability provisions that would enable the employer to enforce the other provisions of the employment agreement."[60] "The concern is that the presence of an unenforceable non-compete covenant in an employment agreement may have an undesirable deterrent effect on employees who do not know their rights under California law."[61] In totality, California stresses that enforcing a non-compete agreement would "undermine the protection given to employees."[62]

1. *California's Statutory Exceptions*

Although California generally does not enforce non-competes, the California Business and Professions Code Sections 16601 to 16602.5 provide for three statutory exceptions that identify when non-competes may be enforceable.[63] First, under Section 16601, a "person who sells the goodwill of a business, or all of one's ownership interest in a business entity, or substantially all of its operating assets and goodwill" may enter into a non-compete with the buyer agreeing not to carry out a similar business within a certain geographic area.[64] Section 16601 is an exception to California's non-compete law because it protects the buyer from competing with the seller in

57. *D'sa*, 102 Cal. Rptr. 2d at 501 (quoting Baker Pacific Corp. v. Suttles, 269 Cal. Rptr. 709, 714 (Cal. Ct. App. 1990)).

58. *D'sa*, 102 Cal. Rptr. 2d at 499–500.

59. *Id.* at 500.

60. *Id.* at 496.

61. Gary R. Siniscalco, *United States Law on Restrictive Covenants and Trade Secrets*, 2 RESTRICTIVE COVENANTS AND TRADE SECRETS IN EMPLOYMENT LAW AN INT'L SURVEY 1, 23 (2010) http://apps.americanbar.org
/labor/intlcomm/mn/papers/2010/pdf/siniscalco.pdf.

62. *D'Sa*, 102 Cal. Rptr. 2d at 501.

63. *See* CAL. BUS. & PROF. CODE § 16601 (2007); CAL. BUS. & PROF. CODE § 16602 (2003); CAL. BUS. & PROF. CODE § 16602.5 (2007).

64. Jeffrey S. Klein et al., *The Trade Secrets Exception to California's Ban on Employee Noncompetition and Nonsolicitation Agreements After* Edwards v. Arthur Andersen, LLP, WEIL (Dec. 6, 2013), http://www.weil.com/ articles/the-trade-secrets-exception-to-californias-ban-on-employee-non competition2_12-06-2013. *See* CAL. BUS. & PROF. CODE § 16601 (2007).

which such "competition would have the effect of reducing the value of the property right that was acquired."[65]

The second statutory exception, under Section 16602, enforces a non-compete upon the dissolution of, or dissociation from, a partnership.[66] This exception is broader than the exception stated in Section 16601 "because the non-compete may extend to the geographic area where the acquiring company . . . transacts business, and is not limited to the geographic area where the sellers transacted business before the sale transaction."[67] California courts have applied Section 16602 to partnerships involving accountants, attorneys, and physicians.[68] "Courts have found that such [agreements], rather than prohibiting competition, place a price on competition by, for example, permitting the departing partner to contract for compensation in return for refraining from engaging in competing business activity, or vice versa."[69]

Finally, under Section 16602.5, a non-compete may be enforceable against a member of a limited liability company who agrees not to carry on a similar business within a certain "geographic area, so long as other members or anyone deriving title to the business or its goodwill carries on a like business."[70] Section 16602.5 is similar to California's partnership exception (Section 16602), and, therefore, the courts will likely apply it similarly.[71] In summation, these statutory exceptions protect employers, safeguarding their business interests from potential competition caused by a "seller of a business, a former business partner, or a former member of an LLC."[72]

In applying California's three statutory exceptions, courts have mainly required that the non-compete agreement be "reasonable."[73] In particular,

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65. Walter M. Stella & Tyler M. Paetkau, *California's Statutory Exceptions to Restraints on Trade: Open Competition and Employee Mobility Give Way to Buyers and Sellers of Businesses*, CAL. LABOR & EMP. BULL. 18 (Jan. 2008), http://www.hartnettsmith.com/wp-content/themes/hartnettsmithpaetkau-082012/docs/Statutory-exceptions-to-Cal-ban-on-noncompetes.pdf.

66. *Id.*; CAL. BUS. & PROF. CODE § 16602 (2003).

67. Stella & Paetkau, *supra* note 65, at 20.

68. *See* Swenson v. File, 475 P.2d 852 (Cal. 1970); Howard v. Babcock, 863 P.2d 150, 154–55 (Cal. 1993).

69. Peter A. Steinmeyer, *You May Think That All Non-Compete Agreements Are Unenforceable Under California Law, But You Would Be Wrong*, EPSTEIN BECKER GREEN (July 25, 2011), http://www.tradesecretsnoncompetelaw.com/2011/07/articles/non-compete-agreements/you-may-think that-all-non-compete-agreements-are-unenforceable-under-california-law-but-you-would-be-wrong. *See Babcock*, 863 P.2d at 154.

70. Klein et al., *supra* note 64. *See* CAL. BUS. & PROF. CODE § 16602.5 (2007).

71. Steinmeyer, *supra* note 69.

72. *Id.*; Melinda Pilling, *Job Hopping—A California Right: Non-Compete Agreements*, RUKIN HYLAND DORIA & TINDALL L.L.P. (June 4, 2014), http://www.rhdtlaw.com/job-hopping-california-right.

73. Stella & Paetkau, *supra* note 65, at 20.

"a[n] [agreement] not to compete will be enforced to the extent that it is reasonable and necessary in terms of time, activity and territory to protect the buyer's interest."[74] However, despite this requirement of reasonableness, courts have applied the three exceptions broadly.[75] California courts have enforced lengthy non-competes when it was necessary to protect the buyer's interests.[76] Such courts have also enforced a non-compete in a business and partnership sale even though it lacked a temporal or geographic restriction.[77] The court will "read[] a 'reasonable' restriction into the non-compete obligation."[78] Thus, when determining the applicability of the three statutory exceptions, California's test of reasonableness acts as a prerequisite to enforceability.

2. *California's Common Law Exceptions*

Aside from California's three statutory exceptions, courts have enforced non-compete clauses under two limited common law exceptions.

The first exception is the "narrow restraint exception."[79] Under this exception, "federal courts would enforce non-competition agreements that do not completely prohibit an employee from engaging in his or her profession."[80] Non-compete agreements would be enforceable if they prohibited a party from engaging in only a small area of his or her profession, rather than completely banning a party from the entire profession.[81] However, a subsequent 2008 California Supreme Court case, *Edwards v. Arthur Anderson LLP*, questioned the exception and found it unenforceable.[82] The court found the narrow-restraint exception unenforceable because, prior to this decision, California courts had not embraced it.[83] The court went on to state that Section 16600 is clear, and "if the Legislature intended the statute to apply only to restraints that were unreasonable or overbroad, it could have included language to that

74. *Id.* (quoting Vacco Indus. v. Van Den Berg, 6 Cal. Rptr. 2d 602, 609 (Cal. Ct. App. 1992)).
75. Stella & Paetkau, *supra* note 65, at 20–21.
76. *Id.* at 21.
77. *Id.*
78. *Id.*
79. Klein et al., *supra* note 64.
80. *Id.*
81. *Id.*
82. Edwards v. Arthur Anderson L.L.P., 189 P.3d 285, 293 (Cal. 2008).
83. *Id.*

effect."[84] As a result, California's courts thereafter declined to apply the narrow restraint exception.

In contrast, California's second common law exception, the "trade secret exception,' remains in effect.[85] As identified by its title, the trade secret exception applies, and a non-compete may be enforceable, when it is "necessary to protect the employer's trade secrets."[86] The rationale behind this exception is "that employers have the right to protect proprietary and property rights which are subject to the protection under the law of unfair competition."[87] In particular, the trade secret exception requires the non-compete to be "narrowly tailored or carefully limited to the protection of trade secrets."[88] For instance, in *Dowell v. Biosense Webster, Inc.*, the court refused to apply the trade secret exception because the non-compete clause was overly broad as to restrain competition itself.[89] Most notably, and among the view of at least one other California court, the court in *Dowell* "doubt[ed] the continued viability of the common law trade secret exception to covenants not to compete."[90] Furthermore, the Northern District of California "adopted the restrictive view that *Edwards* prohibits all non-statutory exceptions to the prohibition against non-competition clauses, but did so without specifically considering the trade secrets exception."[91] Thus, today, California's trade secret exception remains in effect but rests on unsettled common law.

II. MICHIGAN'S NON-COMPETE DEBATE

In synthesizing both Michigan's and California's law on non-compete clauses, as discussed in depth in Part I, each state treats the enforcement of non-competes differently. Michigan enforces non-competes subject to a two-prong test, while California does not enforce non-competes, subject to minor exceptions.[92] Michigan's current tension between the interests of the employer and employee in enforcing non-compete clauses, as identified in Part II, may be remedied by adopting a nuance of California's non-compete law. In

84. *Id.*

85. *See* Klein et al., *supra* note 64.

86. *Id.* (quoting Muggill v. Reuben H. Donnelly Corp., 398 P.2d 147, 149 (1965)).

87. D'Sa v. Playhut, Inc. 102 Cal. Rptr. 2d 495, 501 (Cal. Ct. App. 2000) (citing Metro Traffic Control, Inc. v. Shadow Traffic Network, 27 Cal. Rptr. 2d 573, 578 (Cal. Ct. App. 1994)).

88. Dowell v. Biosense Webster, Inc., 102 Cal. Rptr. 3d 1, 5 (Cal. Ct. App. 2009).

89. *See id.*

90. *Id.*

91. SriCom, Inc. v. EbisLogic, Inc. No. 12-CV-00904-LHK, 2012 WL 4051222, at *5 (N.D. Cal. Sept. 13, 2012).

92. *See generally* Hegner, *supra* note 37; Anderson, *supra* note 6.

particular, Michigan should not enforce non-compete clauses, subject to California's three minor statutory exceptions. By adopting this solution, Michigan's current non-compete debate may be remedied. This solution is ideal and preferable in ensuring a successful future for Michigan's economic growth.

A. *Advantages and Disadvantages of Enforcing Non-Compete Clauses*

Employers actively seek to uphold and enforce non-compete clauses to safeguard their overall business.[93] Employers safeguard their overall business largely by keeping talented teams working together.[94] Employees are willing to stay within the business because they receive a higher compensation for signing non-compete clauses.[95] In turn, an employer maximizes profits while avoiding expensive turnover and recruiting costs.[96] An employer prevents his or her competition from gaining talented team members.[97] This prevention enables employers to maintain a competitive edge and reduce competition.[98] Thus, because of this employer advantage, there remains a high incentive to enforce non-competes.

Employers also uphold and enforce non-compete clauses to protect confidential information such as preventing the disclosure of trade secrets.[99] Trade secrets include such items as "research and development data, customer lists and related information, financial data, and strategic plans and corporate information."[100] Employers try to protect these assets, because "[f]or many businesses, a growing percentage of their value is made up of intangible assets like intellectual property and trade secrets. As these items grow in value, ensuring protection of [the] business's trade secrets is of the utmost importance to its success and future growth."[101] Therefore, employers protect trade secrets—i.e. by enforcing non-competes—to maintain a successful growing business.

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93. Eric Johnson, *Enforceability of Noncompete Agreements*, FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A. (Apr. 2012), http://www.fryberger.com/articles/enforceability-of-noncompete-agreements.

94. *See* Zemke, *supra* note 1.

95. *Id.*

96. Marx & Fleming, *supra* note 22, at 51.

97. *Id.*

98. *Id.*

99. *See* Johnson, *supra* note 93.

100. Michael Hamblin, *Misappropriation of Trade Secrets*, MICHAEL J. HAMBLIN, http://www.hamblinlaw.com/misappropriation-of-trade-secrets.html (last visited Oct. 19, 2015).

101. *Id.*

Despite the advantages employers gain from the use of non-compete clauses, law and economic scholars, William Landes and the Honorable Richard Posner, have concluded, "it is not even clear that enforcing employee [non-compete clauses] generates social benefits in excess of its social costs."[102] The social costs to employees include, but are not limited to: anti-competitiveness, employer advantage, consideration, reduction in job mobility, and investor emigration.[103]

Anti-competitiveness refers to "any practice that has, is intended to have, or is likely to have, the effect of . . . preventing competition."[104] Although it acts as a benefit to employers, anti-competitiveness results in a great disadvantage to employees because they are prevented from starting their own business within the same industry.[105] Such prevention deters economic growth because, entrepreneurs, new firms, and small firms are highly successful in creating new technologies and introducing innovation into established markets.[106] Dug Song, owner of Duo Security in Michigan, argues in favor of employee competition, stating, "I'm not afraid of competition. . . . If I can get someone here that has the motivation and drive to do their own thing and I can have them here for two years, that's perfect.'[107] As Dug Song would argue, and as a result of deterring former employees from competing, current employees' drive and ambition to scale—knowing they cannot use their skills and experience elsewhere—will also be deterred.[108] On Amir and Orly Lobel's 2010 study supports this proposition in finding that "non-competes actually reduce the employee's incentive to 'invest in their work performance,'" and therefore, overall, serve as a detriment for businesses, "reduc[ing] the firm's innovation and economic growth."[109]

Grossly favoring employers, Michigan's non-compete law is broad, which enables employers "to abuse such [clauses], limiting the employment options of former employees that have displeased them."[110] Furthermore, employees

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102. Amir & Lobel, *supra* note 3.

103. *See generally id.*

104. *The Importance of Competition Policy*, BUS. CASE STUD. (2015), http://businesscasestudies.co.uk/office-of-fair-trading/the-importance-of-competition-policy/anti-competitivepractices.html#axzz3qvobPQQ0.

105. *See* Zemke, *supra* note 1.

106. Amir & Lobel, *supra* note 3, at 859.

107. Zemke, *supra* note 1.

108. *See generally id.*

109. Moffat, *supra* note 28, at 91 & n. 189 (quoting On Amir & Orly Lobel*, Innovation Motivation: Behavioral Effects of Post-Employment Restrictions* 35 (UNIV. OF CAL. SAN DIEGO LEGAL STUDIES PAPER NO. 10-32, 2010)).

110. Zemke, *supra* note 1.

are at a disadvantage because many employees sign such clauses thinking that upon termination, they are released from the employer's contract which is often times not the case.[111] In fact, a 2012 study, which conducted a cost-benefit analysis on the effects of non-competes, reported "that one-quarter of those who signed non-competes and then changed jobs also changed industries—leaving their field of expertise to take a 'career detour.'"[112] Such employees, "reported reduced compensation, atrophy of their skills, and estrangement from their professional networks."[113] In comparison, those that did not sign a non-compete clause "were considerably less likely to change industries when they changed jobs."[114] Thus, by continually enforcing non-competes, employers unfairly keep their employees within the business, and upon leaving, limit their employees' career options.

Another disadvantage to employees when enforcing non-competes is the problem of consideration.[115] The *People's Law Dictionary* defines consideration as "a benefit which must be bargained for between the parties."[116] In relation to a non-compete clause, the problem entails '"the question of what consideration must be provided to an at-will employee when [he or she] sign[s] a new or amended restrictive covenant[,] 'a non-compete clause, according to Peter Steinmeyer, co-chair of the non-competes, unfair competition and trade secrets practice group at Epstein Becker & Green PC.'"[117] A worker could possibly negotiate for a higher compensation upon signing such a clause.[118] However, employers often present non-competes after an employee has already accepted the job offer.[119] Therefore, "it remains an open question whether the signing of non-competes bring bargaining opportunities to workers."[120]

A fourth disadvantage is that, as a result of enforcing non-competes, many workers in Michigan are bound by their employment contracts, and thus, not

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111. *Id.*

112. Marx & Fleming, *supra* note 22, at 48.

113. *Id.*

114. *Id.*

115. *See generally* Ben James, *7 Important Non-Compete Rulings from the 1st Half of 2015*, LAW360 (July 16, 2015), http://www.law360.com/articles/678489/7-important-non-compete-rulings-from-the-1st-half-of-2015.

116. *Consideration*, PEOPLE'S LAW DICTIONARY (2015), http://dictionary.law.com/Default.aspx?selected=305.

117. James, *supra* note 115.

118. Marx & Fleming, *supra* note 22, at 51.

119. *Id.*

120. *Id.*

able to work elsewhere.[121] Marx and Fleming's 2012 study analyzed the extent of this effect.[122] The study found that "the mobility of Michigan workers dropped by 8.1% following . . . the repeal of the non-compete ban."[123] The study also found that employees in Michigan "with highly specialized skills were twice as likely to remain loyal to their employers following the implementation of non-compete enforceability."[124] According to the study, this result was due to the problem highly skilled employees face when seeking other employment within their industry.[125] Because of this problem, a 2013 experimental study concluded that non-compete clauses essentially lower market performance.[126]

In addition, employees—bound by their employment—cannot create new businesses, which leads to a further problem of investor emigration.[127] Today, investors, looking to have more "freedom," move to states, such as California, where non-competes are unenforceable.[128] According to a 2010 study, in states that do not enforce non-competes, venture capital has resulted in an increase in "the number of patents, the number of firm starts, and the employment rate [compared to those] states that do enforce non-competes."[129]

Furthermore, companies in states where non-competes are unenforceable (such as Google and Apple located in Silicon Valley, California) are willing to relocate individuals with specialized expertise.[130] As a result, instead of being bound by a non-compete clause, an employee with specialized skills is more likely to move to a state where non-compete clauses are unenforceable, such as California.[131] According to Lee Fleming, a Berkeley professor who co-authored a 2012 study on non-competes, stated, "if the job [the individual] relocate[s] for doesn't work out, then [he or she] can walk across the street

121. *See generally id.*

122. *Id.* at 47.

123. *Id.* at 48.

124. *Id.*

125. *Id.*

126. Amir & Lobel, *supra* note 3, at 837.

127. *See generally Laws on Non-Compete Agreements Hurt Michigan, New Study Says*, CRAIN'S DETROIT BUS. (Mar. 18, 2015), http://www.crainsdetroit.com/article/20150318/NEWS01/150319843/laws-on-non-compete-agreements-hurt-michigan-new-study-says [herinafter *Bloomberg*].

128. *Id.*

129. Amir & Lobel, *supra* note 3, at 860 (examining the effects of venture capital funding as a result of the enforcement of non-competes).

130. *See generally id. See generally, e.g.*, Joanna Pearlstein, *The Schools Where Apple, Google, and Facebook Get Their Recruits*, WIRED (May 22, 2014, 6:30 AM), http://www.wired.com/2014/05/alumni-network-2.

131. *Bloomberg*, *supra* note 127.

because there are no noncompetes."[132] As one can imagine, this tactic is very attractive to many skilled employees who seek the freedom to work wherever they want to without having to worry about violating a former employer's non-compete clause.[133]

B. *Michigan's House Bill 4198*

To combat the many disadvantages Michigan's non-compete clauses pose to employees, Michigan's State Representative, Peter Lucido, introduced House Bill 4198, which would potentially ban non-compete clauses in Michigan.[134] The Bill in part reads, "any term in an agreement an employer obtains from an employee, contract laborer, or other individual that prohibits or limits the individual from engaging in employment is void."[135] However, upon passage of this Bill, non-compete clauses would remain in effect during the sale of a business.[136] In particular, "a purchaser of a business may obtain noncompete restrictions from the seller, principles, or officers of the business if it is in writing, entered into as a result of the sale, and at the time the sale takes place."[137] Therefore, the effect of such Bill "would alter an existing law that allows noncompetes during the sale of a business, limiting the former business owner from directly competing with their former company."[138]

State Representative Peter Lucido introduced the Bill because he believes non-compete clauses are oppressive to employees and possibly even against the law, referring to '"the 1984 Michigan Antitrust Reform Act, which states, '[l]abor of a human being is not a commodity or an article of commerce.'"[139] In his view, non-compete clauses are oppressive to employees because such clauses prevent them from working, and thus, from making a living.[140]

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132. *Id.*

133. *See generally* Norman D. Bishara & Michelle Westermann-Behaylo, *The Law and Ethics of Restrictions on an Employee's Post-Employment Mobility*, 49 AM. BUS. L.J. 1 (2012).

134. Vanko, *supra* note 26.

135. H.B. 4198, 2011 Leg., 98th Sess. (Mich. 2011).

136. Jason Shinn, *Proposal Would Significantly Limit Use of Non-Compete Agreements in Michigan*, MICH. EMP. LAW ADVISOR (Mar. 4, 2015), http://www.michiganemploymentlawadvisor.com/employment-agreements/non-compete-agreements/proposal-would-significantly-limit-use-of-non-compete-agreements-in-michigan.

137. *Id.*

138. Dustin Walsh, *House Bill Would Ban Non-Compete Agreements in Michigan*, CRAIN'S DETROIT BUS. (Mar. 22, 2015), http://www.crainsdetroit.com/article/20150322/NEWS/303229987/house-bill-would-ban-non-compete-agreements-in-michigan.

139. *Id*. (quoting MICH. COMP. LAWS SERV. § 445.774 (1985)).

140. Walsh, *supra* note 138.

In opposing House Bill 4198, critics, mainly local attorneys, not only think this thirty-year-old law is necessary, but also think banning such clauses would have a substantially negative effect on protecting intellectual property, i.e., trade secrets.[141] State Representative Lucido responds by stating that trade secrets can be protected by using and enforcing nondisclosure and proprietary confidentially agreements.[142] Therefore, using these avenues eliminates the threat of employee work deterrence.[143] Critics, in response, state that these agreements are too hard to "monitor and police."[144]

The Committee on Commerce and Trade decides whether to pass House Bill 4198.[145] Jason Shinn, a Michigan employment law attorney, suggests, "Michigan politicians have a difficult time passing legislation on issues with broad support."[146] For House Bill 4198 to pass, it would need many supporters—and possibly a great length of time to gain momentum.[147] However, even if Michigan's House Bill 4198 fails to become a law, the introduction of such a bill exemplifies the current tension between the interests of the employer and employee in enforcing non-competes.

In conclusion, if Michigan continues to enforce non-competes, its workforce will continually and exponentially seek employment elsewhere, i.e., to states, such as California, which do not enforce non-competes.[148] One reason employees will seek employment elsewhere is from fear that they may be in violation of a former employer's non-compete clause.[149] Therefore, to prevent employees from seeking jobs elsewhere, it is important for Michigan to reform its non-compete law.

C. *Michigan's Current Solution to "Unreasonable" Non-Competes*

Today, if a non-compete clause is unreasonable, a court in Michigan is likely to participate in "[b]lue-penciling."[150] This term refers to a judge's act

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141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. Shinn, *supra* note 136.

146. *Id.*

147. *See generally id. Eliminate Non-Competes in Michigan?*: HB 4198, COOPER RIESTERER P.L.C., http://crlaw.biz/index.php/eliminate-non-competes-in-michigan-hb-4198 (last visited May 18, 2017).

148. Bloomberg, *supra* note 127.

149. *See* Bishara & Westermann-Behaylo, *supra* note 133.

150. *See Is Your Non-Compete Subject to Blue-Penciling?*, TRAVERSELEGAL (Oct. 30, 2014, 4:54 PM), http://tcattor ney.typepad.com/non-compete/2014/10/is-your-non-compete-subject-to-blue-penciling. html.

of rewriting, or modifying, a non-compete clause "to make it reasonable where it is otherwise unreasonable as it applies to an employee."[151] Despite this proposed solution, blue-penciling acts as a huge disadvantage to employees.[152] More than likely, an employee does not know a non-compete clause exists; let alone is informed as to how such a clause limits him or her in the future.[153] For instance, Marx and Fleming's 2012 study found that "barely [three] in [ten] workers" stated that their employer informed them about the non-compete in their job offer.[154] In about 70% of cases, the employer had the employee sign a non-compete after the job offer "and, consequently, after having turned down (all) other offers."[155] About half the time, the employee first witnessed the non-compete on or after the first day of work.[156] Furthermore, even if the courts amend such clauses, employees are still deterred from seeking employment in the future, and more than likely will have to change their careers completely.[157] The reason for such a career detour is fear of violating a former employer's non-compete clause, which, if violated, could cost money in litigation.[158] In fact, "the employer can use the mere threat of litigation over a noncompete to chill the employee's desire to move to a competitor or to start a competing enterprise."[159] Thus, through blue-penciling, courts in Michigan continue to enforce non-competes even if such clauses are unreasonable and unfair to the employee. For this reason, Michigan's solution is inadequate in remedying an unenforceable non-compete.

As a result of continually enforcing non-compete clauses, employees in Michigan are left to suffer the consequences.[160] According to Randall S. Hansen, Ph.D., "The best thing any job-seeker can do . . . is to get a copy of [a non-compete], review it with a lawyer, and attempt to negotiate any necessary changes."[161] The problem with this advice is that it is unrealistic for employees

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151. *Id.*

152. *See generally* Pivateau, *supra* note 20.

153. *See* Marx & Fleming, *supra* note 22.

154. *Id.* at 49.

155. *Id.*

156. *Id.*

157. *See generally* Bishara & Westermann-Behaylo, *supra* note 133 (citing Larry A. DiMatteo, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L.J. 727, 765 (2010)).

158. *See id.*

159. *Id.*

160. *See generally* Randall S. Hansen, Ph.D., *Dealing with Non-Compete Clauses and Agreements*, QUINT CAREERS, http://quintcareers.com/non-compete-clauses (last visited Oct. 19, 2015).

161. *Id.* Randall S. Hansen, Ph.D., is the founder of a comprehensive career development site.

to hire an attorney to review an employment contract, especially in today's society where employees are likely to move from job to job.[162] According to Marx and Fleming's 2012 study, fewer than one in ten workers who signed a non-compete reviewed it with an attorney. In fact, "nearly half of [employees] report[ed] that they were placed under time pressure to agree or told that the non-compete was nonnegotiable."[163] As a result, because of this enforcement, employees are left with minimal options when instructed by their employer to sign a non-compete clause.

III. PROPOSED SOLUTION TO MICHIGAN'S NON-COMPETE DEBATE

To protect the future of Michigan's employees, non-compete clauses in Michigan should be unenforceable subject to California's three statutory exceptions. This solution is both ideal and practical in solving Michigan's non-compete debate because such a solution protects reasonable competition without putting employees at a disadvantage.[164] By refusing to enforce non-competes, places like Silicon Valley and companies, such as Apple, Google, Intel, Adobe, and Facebook, have not only developed economically, but have also flourished.[165] Such places have flourished because—as a natural result of refusing to enforce non-competes—the many disadvantages non-competes pose to employees are eliminated.[166] For instance, Stanford Law Professor Ron Gilson found that by not enforcing non-compete clauses, California increased its labor mobility and spurred the creation of new businesses in Silicon Valley.[167]

A. *Adoption of California's Three Statutory Exceptions*

To protect fair competition, Michigan should adopt California's three statutory exceptions for enforcing non-competes subject to the provision that the non-compete at issue is reasonable.[168] Section 16601, the exception to a seller of a business, should apply in Michigan because it ultimately prevents a

162. *See, e.g.*, Marx & Fleming, *supra* note 22, at 59.

163. *Id.*

164. Part II discusses the many outweighing disadvantages non-compete clauses pose on Michigan's employees.

165. Phillip Korovesis & Bernard Fuhs, *From Michigan to Washington: Proposed Legislation to Ban Non-Competes Could Have a Chilling Effect on Innovation and Economic Growth*, (Butzel Long) Mar. 12, 2015 at 2–3.

166. *See generally* Marx & Fleming, *supra* note 22.

167. Amir & Lobel, *supra* note 3, at 857–58.

168. Stella & Paetkau, *supra* note 65, at 20–22.

seller from "engag[ing] in competition which [would] diminish[] the value of the assets he sold."[169] By applying this exception, a buyer is protected and ultimately encouraged to promote the economy. Similarly, Sections 16602 and 16602.5, the exceptions to a former business partner and a former LLC member, should apply because such exceptions prevent a person from engaging in a "similar business within a specified geographic area where the existing partnership or limited liability company is located."[170] These exceptions make sense to apply because otherwise Michigan would encourage a former business partner, or former LLC member, to gain an unfair advantage.[171] Therefore, by implementing these exceptions, Michigan is promoting reasonable competition while still providing protection to its employees.

However, advocates in favor of enforcing non-compete clauses claim that non-competes, if reasonable, protect an employer's legitimate business interests and can be enforceable without hindering innovation.[172] "In fact, non-compete [clauses] . . . promote and cultivate innovation and serve a vital role in a knowledge-based economy by protecting entrepreneurs' ideas, investments, goodwill and other legitimate business interests."[173] For instance, an entrepreneur would forego investing in an idea if a former employee could take the entrepreneur's trade secrets and "move across the street and unfairly compete against the entrepreneur."[174] Therefore, without providing protection against this unfair competition, a former employee could potentially profit off of an entrepreneur's idea.[175]

This argument—that non-competes protect an employer's legitimate business interests without hindering innovation—is clearly flawed. By subjecting Michigan to California's three statutory exceptions, reasonable competition in Michigan would continue to be protected.[176] For instance, by preventing a former business partner or former LLC member from competing in a similar business within a specified geographic area, a former employee is prohibited from "mov[ing] across the street and unfairly compet[ing] against"

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169. *Enforcing Non-Compete Provisions in California*, VENABLE L.L.P., https://www.venable.com/enforcing-non-compete-provisions-in-california-01-13-2012 (last visited Jan. 11, 2016).

170. *Id.*

171. *See* Stella & Paetkau, *supra* note 65, at 18.

172. Korovesis & Fuhs, *supra* note 165, at 5.

173. *Id.*

174. *Id.* at 5.

175. *Id.*

176. *See generally id.*

the former employer.[177] Furthermore, aside from promoting reasonable competition within a specified geographic area, even if a former employee was to compete with a former employer, the non-compete at issue would be subject to a reasonableness test.[178] By subjecting the non-compete to California's reasonableness test, a former employee could not outright take a former employer's idea and profit therefrom.[179] Thus, subjecting Michigan's non-compete law to California's statutory exceptions continues to provide protection to employers specifically in promoting only reasonable competition.

B. *California's Trade Secret Exception*

On the other hand, Michigan should not adopt California's common law trade secret exception. The reason why Michigan should not adopt this common law exception is due to its faulty application.[180] Not only has California failed to define the scope of the exception, but also the extent of an employer's trade secret protection is unclear.[181] In fact, no California court "actually held that the misappropriation of trade secrets could justify the inclusion of a covenant not to compete."[182] Furthermore, "[i]f there were an exception then virtually all non-compete agreements would be valid, as everyone would say their noncompete is needed to protect trade secrets."[183] There is no need for the exception because, similar to California, the Michigan's Uniform Trade Secrets Act already protects trade secrets.[184] Therefore, because the exception cannot be applied and is virtually meaningless, Michigan should not adopt California's trade secret exception.

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177. *Id.*

178. Stella & Paetkau, *supra* note 65, at 20.

179. *See id.* at 20–21.

180. *See generally* Stephen Tedesco, *You Can't Do "What" in California? A Summary of California's (Virtually Nonexistent) Restrictive Covenant Laws for Out-of-State Employers*, LITTLER (Jan. 18 2011), https://www.littler.com/you-cant-do-what-california-summary-californias-virtually-nonexistent-restrictive-covenant-laws-out.

181. *Id.*

182. Stephen Tedesco, *The Trade Secret Exception in California: Dead, Near Dead or Just Dying?* BENDER'S CALIFORNIA LABOR & EMP. BULL. (LexisNexis Matthew Bender, Albany, NY), Aug. 2011 at 230.

183. Brian Kindsvater, *California Non-Compete Trade Secret Exception*, NONCOMPETE HELP (2016) http://noncompetehelp.com/california-non-compete-trade-secret-exception.html.

184. *Id.*

Despite the exception's inapplicability, California's federal district courts have continued to apply the trade-secret exception.[185] Nonetheless, in the event Michigan does not adopt California's trade-secret exception, employers still have other ways to protect their trade secrets.[186] Employers can take an active role in the following ways:

> [1] restricting access to trade secrets internally within a company to those who need to know the information and who have acknowledged receipt of the company's trade secret protection policy; [2] providing password protection to computer files containing trade secrets; [3] marking hard copies of trade secret information as "confidential"; [4] placing restrictions on the ability to photocopy or to download such information; and [5] preventing former employees from having access to such information.[187]

In evaluating the protection of trade secrets, the court heavily determines the adequacy of such protection on a case-by-case basis.[188] The reason for this is because trade secrets are unique to each business.[189] Therefore, even if Michigan does not adopt a trade secret exception to its non-compete law, employers are still able to adequately protect their trade secrets through other means.

CONCLUSION

Currently, Michigan upholds non-compete clauses in favor of employers, subject to a two-prong test of enforceability. As a result, employees are ultimately and continually deterred from seeking jobs in Michigan. The state's current solution in preventing this major employee disadvantage is to amend an invalid non-compete. However, this solution does not remedy the many disadvantages non-competes pose to employees. As a result, Michigan's State Representative, Peter Lucido, proposed Michigan's House Bill 4198 that

185. Bank of America v. Lee, No. 08-CV-05546CAS(WJX), 2008 WL 4351348, at *6 (C.D. Cal. 2008); Richmond Technologies Inc. v. Aumtech Bus. Solutions, No. 11-CV-02460-LHK, 2011 WL 2607158, at *17 (N.D. Cal. 2011). *See* Asset Marketing Systems v. Gagnon, 542 F.3d 748, 758 (9th Cir. 2008) (acknowledging the existence of the trade secret exception); Applied Materials, Inc. v. Advanced Micro-Fabrication Equipment (Shanghai) Co., 630 F. Supp. 2d 1084, 1089 n.7 (N.D. Cal. 2009).

186. *See generally Non-Competes and Trade Secrets in California: Protecting Customer/Client Relationships*, PUMILIA & ADAMEC L.L.P., http://www.pumilia.com/articles/26-non-competes-and-trade-secrets-in-california-protecting-customer-client-relationships (last visited Jan. 11, 2016).

187. *Id.*

188. *Id.*

189. *Id.*

would potentially invalidate non-competes. However, despite this proposed bill, Michigan has yet to amend its non-compete law.

This Note proposes that the solution to Michigan's non-compete debate is a nuance of California's non-compete law. In particular, this solution proposes that non-compete clauses in Michigan should be unenforceable subject to California's three minor statutory exceptions. This solution is ideal and practical in remedying the many disadvantages non-competes pose to Michigan's employees. Furthermore, subjecting Michigan's non-compete law to California's three statutory exceptions will promote reasonable competition to protect employers' interests. Michigan will ensure itself a successful future for its employers and employees by adopting this Note's proposed solution.