



# Could New Jersey be the Next State to Join the Noncompete Ban Wagon?

## Client Advisories

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By: Thomas A. Muccifori

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A bill proposing to render employment noncompete agreements (NCA) unenforceable has been introduced in every New Jersey legislative session since 2022 (See “[Déjà Vu All Over Again](#)”), and each time it has failed to advance before the end of the term. That history makes recent developments surrounding NJ Assembly Bill A5708 noteworthy, as eyes have once again turned to whether New Jersey could become the next state to join the noncompete “ban wagon.”

On December 4, 2025, A5708 cleared the Assembly Labor Committee in a bipartisan 8–2 vote and was referred the same day to the Assembly Regulated Professions Committee. With the Legislature set to adjourn on January 12, the bill may reach the Assembly floor before the end of the session. Governor Murphy may also view A5708 as potential legacy legislation in the final weeks of his term, renewing attention on whether New Jersey could become the sixth state to enact a broad noncompete ban.

## What A5708 Would Entail

- The legislation would void most employment noncompete restrictions, including those in existing agreements.
- The bill includes a very limited exception for “senior executives” but only if that senior executive (1) has policy-making authority and (2) earns at least \$151,164.00 (among other requirements)
- All existing noncompetes with non-senior executives would become unenforceable immediately.

## Key Employer Obligations and Risks

- **Notice requirement:** Employers would have 30 business days to post a copy of the law in a prominent workplace location notifying workers that noncompetes are unenforceable.

- **Private right of action:** Workers could sue to enforce the statute, with courts authorized to award (1) injunctive relief, (2) liquidated damages of up to \$10,000, (3) lost compensation, and (4) attorneys' fees. A two-year statute of limitations would apply.
- **Void business-to-business restrictions:** Any agreement between businesses that restricts hiring would be void, including franchise agreements, vendor contracts, staffing arrangements, and joint ventures.

### **Limits on Permissible Noncompetes for Senior Executives**

- Noncompetes must be no broader than necessary to protect legitimate business interests, including trade secrets and other confidentiality issues, and not be unduly burdensome, injurious to the public, or contrary to public policy.
- A maximum post-employment restriction of 12 months.
- Geographic restrictions would be limited to areas where the executive provided services or had a material presence during the prior two years. Executives may not be prohibited from seeking employment outside New Jersey.
- Employers would be required to pay 100% of salary and continue full benefits during the restricted period unless the executive is terminated for misconduct or breaches the agreement. This "garden leave" requirement has been the most controversial feature of prior New Jersey noncompete proposals.
- Employers may not use choice-of-law provisions to avoid New Jersey law for employees who lived or worked in New Jersey for at least 30 days before termination, and employees' rights under the statute may not be waived.

Finally, the bill exempts noncompetes entered into in connection with mergers and acquisitions, including the sale of a business entity, an employer's ownership interest, or substantially all of a business entity's operating assets.

### **What Employers Should Be Doing Now**

Given the bill's potential retroactive impact, New Jersey employers should consider reviewing existing noncompete and no-poach provisions, assessing reliance on alternative protections such as confidentiality/nondisclosure agreements, and evaluating the financial implications of mandatory garden leave.

Archer's **Trade Secret Protection & Restrictive Covenants Group** will continue to monitor A5708.

For questions regarding this proposed legislation, please contact **Thomas Muccifori**, Chair of Archer's Trade Secret Protection & Restrictive Covenants Group, at 856-354-3056 or [tmuccifori@archerlaw.com](mailto:tmuccifori@archerlaw.com).

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## Related People



Thomas A. Muccifori

Partner

✉ [tmuccifori@archerlaw.com](mailto:tmuccifori@archerlaw.com)

☎ 856.354.3056

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