



## Governor of Massachusetts Proposes the Elimination of Non-Competition Agreements in Massachusetts

On April 10, 2014, Governor Deval Patrick unveiled legislation to prohibit Massachusetts companies from requiring employees to sign non-competition agreements as a condition of their employment. This proposal is part of a greater economic development bill entitled An Act to Promote Growth and Opportunity (the Act) and is tied to the Commonwealth adopting what is labeled as a “Uniform Trade Secrets Act.” Specifically, the Act provides:

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. This section shall not render void or unenforceable the remainder of the contract or agreement. Nor shall this section affect (i) covenants not to solicit or hire employees or independent contractors of the employer; (ii) covenants not to solicit or transact business with customers of the employer; (iii) non-disclosure agreements; (iv) noncompetition agreements made in connection with the sale of a business or substantially all of the assets of a business, when the party restricted by the noncompetition agreement is an owner of at least a 10 percent interest of the business who received significant consideration for the sale; (v) noncompetition agreements outside of an employment relationship; (vi) forfeiture agreements; or (vii) agreements by which an employee agrees to not reapply for employment to the same employer after termination of the employee.

Currently, although there already are some statutory exceptions for certain professions, Massachusetts courts will uphold non-competition agreements as long as the following conditions are met:

- > The agreement is narrowly tailored to protect legitimate business interests;
- > The agreement is limited in time, geography, and scope;
- > Upholding the non-compete is consonant with public policy; and
- > Harm to the employer if the non-compete is not upheld outweighs harm to employee.

Most states allow some form of non-competition agreement; however, if the Governor's proposal is passed, Massachusetts will join California as a state that bans these agreements in the context of an employment relationship. The Governor relies on the loss of technology jobs to California as a reason for proposing the Act. He states that companies in the thriving life sciences industry would be among the many beneficiaries of the Act. However, many Massachusetts business owners are concerned that passage of the Act will hinder their ability to protect their trade secrets and corporate goodwill.

According to the Governor, the simultaneous adoption of the Uniform Trade Secrets Act will soften any negative consequences of eliminating non-competition agreements, and will allow companies to protect their trade secrets from misappropriation. The version of the Uniform Trade Secrets Act, however, arguably contains more stringent provisions for protecting trade secrets than model uniform acts adopted by other states.

The Governor's legislation was only recently introduced and the state legislature will have an opportunity to consider the proposal over the coming weeks and months. However, unless and until this or something similar is enacted, non-competes will still be the law in Massachusetts.

This *GT Alert* was prepared by **David G. Thomas, Jamey L. Tesler, Michael E. Pastore, and Justin F. Keith**. Questions about this information can be directed to:

- > [David G. Thomas](#) | 617.310.6040 | [thomasDA@gtlaw.com](mailto:thomasDA@gtlaw.com)
- > [Jamey L. Tesler](#) | 617.310.6026 | [teslerj@gtlaw.com](mailto:teslerj@gtlaw.com)
- > [Michael E. Pastore](#) | 617.310.6277 | [pastorem@gtlaw.com](mailto:pastorem@gtlaw.com)
- > [Justin F. Keith](#) | 617.310.6230 | [keithJ@gtlaw.com](mailto:keithJ@gtlaw.com)
- > Or your [Greenberg Traurig](#) attorney.

<b>Albany</b> 518.689.1400	<b>Denver</b> 303.572.6500	<b>New York</b> 212.801.9200	<b>Shanghai</b> +86 21 6391 6633
<b>Amsterdam</b> + 31 20 301 7300	<b>Fort Lauderdale</b> 954.765.0500	<b>Northern Virginia</b> 703.749.1300	<b>Silicon Valley</b> 650.328.8500
<b>Atlanta</b> 678.553.2100	<b>Houston</b> 713.374.3500	<b>Orange County</b> 949.732.6500	<b>Tallahassee</b> 850.222.6891
<b>Austin</b> 512.320.7200	<b>Las Vegas</b> 702.792.3773	<b>Orlando</b> 407.420.1000	<b>Tampa</b> 813.318.5700
<b>Boca Raton</b> 561.955.7600	<b>London*</b> +44 (0)203 349 8700	<b>Philadelphia</b> 215.988.7800	<b>Tel Aviv^</b> +03.636.6000
<b>Boston</b> 617.310.6000	<b>Los Angeles</b> 310.586.7700	<b>Phoenix</b> 602.445.8000	<b>Warsaw~</b> +48 22 690 6100
<b>Chicago</b> 312.456.8400	<b>Mexico City+</b> +52 55 5029.0000	<b>Sacramento</b> 916.442.1111	<b>Washington, D.C.</b> 202.331.3100
<b>Dallas</b> 214.665.3600	<b>Miami</b> 305.579.0500	<b>San Francisco</b> 415.655.1300	<b>West Palm Beach</b> 561.650.7900
<b>Delaware</b> 302.661.7000	<b>New Jersey</b> 973.360.7900	<b>Seoul∞</b> 82-2-369-1000	<b>White Plains</b> 914.286.2900

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2014 Greenberg Traurig, LLP. All rights reserved.*