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Chairman Manning, Vice Chair Reynolds, and Ranking Member Hicks-Hudson, thank you for allowing Senator DeMora and I to testify in favor of SB 11. Broadly speaking, this legislation is very simple: it prospectively prohibits post-employment agreements otherwise known as “non-competes”. For those unfamiliar with what these agreements are, they’re basically contracts between employers and employees that limit the employment of employees upon termination of employment. Features of these agreements include the following non-exhaustive list:

- Prohibitions on working for competitors for a period of time
- Prohibitions on working in a similar capacity in the same industry
- Prohibitions on working in the same geographic area
- Requiring employees to repay employers for lost profits
- Requiring employees to repay employers for training expenses
- Requiring employees to adjudicate claims out of state
- Depriving employees of substantive legal protection by the laws of this state

The remedy outlined in the bill is to allow workers and prospective workers to bring a civil action against the employer or prospective employer in violation of the law. Additionally, the Attorney General may file suit against employers in violation of this law. Should the plaintiff prevail they’re entitled to court costs and reasonable attorneys’ fees, and may be awarded actual damages, punitive damages not to exceed \$5,000, and injunctive relief.

Setting the operation of the bill aside for a moment, what is the impetus for a reform like this? Decades ago non-compete agreements tended to be in the realm of highly lucrative executive and sales positions. Today, however, they’ve been proliferating to the point

where Jimmy John's employees at the retail level – literally those making the sandwiches – have been forced to sign them. The question is why?

Economists are generally opposed to non-compete agreements because they reduce labor mobility and business formation. The net effect is that they're damaging to the economy as a whole, and reduce wages below what they'd be in a competitive labor market leading to deadweight loss.

However, businesses do not like competition. They also seek to reduce the cost of labor, which is often their largest expense. We say this not to disparage the business community, but only to point out their nature as entities seeking profit. Adam Smith observed as much some two hundred and fifty years ago in *Wealth of Nations*. Thus incumbent businesses – emphasis on incumbent – like non-compete agreements and how they can help their bottom line, which is their primary concern and not the economy at large. Hence the necessity for guardrails like SB 11.

At its core, SB 11 is an incredibly pro-competition and pro-free market bill that in the long run will: lower prices, increase business formation, increase wages, and increase job satisfaction. For those wondering what other states are doing, Ohio is unfortunately very much in the minority on non-competes as one of only ten states with zero protections: <https://www.axios.com/2024/04/25/noncompete-agreement-ban-us-states-2024>.

As much as we hear news stories about Ohio trying to become the “Silicon Valley of the Midwest”, it should be noted that California has outlawed non-competes for over a hundred and fifty years. This has often been credited as a major reason why Silicon Valley is in California and not New York. Ditto for Hollywood. Ohio isn't helping its chances at tech industry glory ignoring the harmful impact of non-competes.

Lastly, public opinion is in the corner of banning non-competes. Ipsos released a poll showing as much: <https://www.ipsos.com/en-us/majority-americans-support-ftc-ruling-would-ban-non-compete-agreements>. We've also attached a Q&A sheet to

anticipate questions from members of the committee. In the meantime, however, we'd be happy to answer any questions you may have. Thank you.

Senate Bill 11 Questions and Answers

- Businesses aren't forcing people to take these jobs, so what's the issue?
 - There are corner cases where businesses are bought out and then attempt to force current employees to sign non-competes. That said, this line of argument is used to block any and all reform and, to us, doesn't represent a good faith argument against a practice that is harmful to the economy at large. Taken to its extreme, this argument could have been used to block child labor laws and workplace safety.
- Hasn't this been taken care of at the federal level?
 - The Federal Trade Commission Non-Compete rule did ban non-competes. However, it was blocked by a federal court. Thus, there is no national non-compete ban. It should be noted that the court largely ruled the way it did because it believed the FTC overstepped its authority.
- What about trade secrets?
 - Employers are still free to use non-disclosure agreements in these cases.
- How is it fair that an employee can learn how to do something at a business and then leave for a competitor or start a new business as a competitor?
 - It might seem unfair to that business, but it can also be said that perhaps the employee wasn't paid what they were worth or thought they could do the job better than their employer on their own. In other words, if incumbent businesses paid their employees better, or operated better, this would be less of a problem. Instead, they've decided to inhibit their employees' economic freedom. The question should elicit less sympathy for the employer and more anger that employers think it's ok to limit or underpay their employees rather than improve.
- Who is for and against this legislation?
 - We suspect you'll see various business interests opposed to it and those interested in anti-trust reform and employee rights in favor. However, this doesn't cut so easily on partisan lines. For example, the center-right organization – the American Enterprise Institute – is in favor of banning, or at least reforming, non-competes: <https://www.aei.org/research->

[products/report/a-better-bargain-how-noncompete-reform-can-benefit-workers-and-boost-economic-dynamism/](#)