

To: Ohio Senate Judiciary Committee

From: Sam Peak, Policy Manager, Economic Innovation Group

Subject: Written Testimony on Senate Bill 11

Date: February 25, 2025

### ***Introduction***

Chair Manning, Vice Chair Reynolds, and Ranking Member Hicks-Hudson, thank you for holding this hearing and providing the opportunity to submit written testimony concerning Senate Bill 11, legislation that aims to ban employer use of non-compete agreements in the state of Ohio.

The Economic Innovation Group (EIG) is a non-partisan research organization devoted to forging a more dynamic, entrepreneurial, and inclusive U.S. economy. The evidence is clear that the widespread use of non-compete agreements in Ohio and elsewhere lowers wages, deters job creation, and inhibits entrepreneurship, and is therefore, anathema to EIG's mission.

According to the Federal Trade Commission (FTC), over 4.3 million Ohioans working in the private sector are bound by non-compete agreements. Banning their use would add over \$2.3 million in Ohio worker earnings each year—all at no cost to the taxpayer.<sup>1</sup>

### ***A full non-compete ban is critical for spurring entrepreneurship***

Currently, Senate Bill 11 bans non-compete agreements for employees of all income thresholds and occupations. It's essential for state lawmakers to resist proposals that exempt high earning professionals from non-compete bans because doing so will undermine the lion's share of the bill's economic benefits.

Research from EIG found that when Hawaii banned non-compete agreements for tech workers in 2015, entrepreneurship in the state spiked by over 10 percent. However, when Oregon banned non-competes for only low-income workers, there was no significant effect on the formation of new businesses.<sup>2</sup> These findings attest to the importance of including highly specialized knowledge workers in any non-compete reform so that the public can

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<sup>1</sup> Federal Trade Commission, *Non-Compete Clause Rule*, 89 Fed. Reg. 38342 (May 7<sup>th</sup>, 2024).

<https://www.federalregister.gov/documents/2024/05/07/2024-09171/non-compete-clause-rule>

<sup>2</sup> Ben Glasner, "The Effect of Noncompete Reforms on Business Formation: Evidence from Hawaii and Oregon." Economic Innovation Group, 2023. <https://eig.org/noncompetes-research-note/>

reap the benefits of newly created jobs, services, and other economic benefits offered by increased entrepreneurship and the ability for skilled workers to carry out their ideas.

According to estimates from the FTC, a nation-wide non-compete ban would create over 8,500 new businesses each year.<sup>3</sup> While such a ban at the national level is stalled both in the courts and in congress, Ohio's passage of Senate Bill 11 would make it among one of just 5 states to have fully banned non-compete agreements, boosting the Buckeye state as a hospitable destination for entrepreneurs.

### ***Non-compete agreements are rarely used to protect proprietary information***

While many critics of non-compete bans claim that they are necessary to protect trade secrets and other proprietary information, research on the topic finds that non-compete agreements are rarely ever enforced and are often applied indiscriminately to employees unlikely to have access to such information. This strongly suggests that safeguarding proprietary information is a pretextual justification for having employees sign non-compete agreements, and that they instead function as a low cost means of deterring workers from pursuing other employment opportunities.

According to a 2023 report from the Government Accountability Office (GAO), over 95 percent of employers claimed that non-compete agreements were necessary for protecting trade secrets and 91 percent claimed that they were needed to protect proprietary client information. However, only 6 percent of employers report frequently enforcing non-compete agreements while 73 percent report rarely or never enforcing them.<sup>4</sup>

The employer response to Washington state's 2019 ban on non-compete agreements for workers making less than \$100,000 further underscores the flimsiness of trade secret justifications. When the ban was put into effect, employers responded by allowing their non-competes to lapse for employees slightly below the threshold rather than raising employee wages to keep the non-compete in place.<sup>5</sup>

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<sup>3</sup> *Supra*, note 1.

<sup>4</sup> "GAO Report Underscores Excessive Use of Non-competes," Economic Innovation Group, 2023. <https://eig.org/gao-noncompetes/>

<sup>5</sup> Takuya Hiraiwa, et al., "Do Firms Value Court Enforceability of Noncompete Agreements? A Revealed Preference Approach," 2023. [https://direct.mit.edu/rest/article-abstract/doi/10.1162/rest\\_a\\_01505/124419/Do-Firms-Value-Court-Enforceability-of-Noncompete?redirectedFrom=fulltext](https://direct.mit.edu/rest/article-abstract/doi/10.1162/rest_a_01505/124419/Do-Firms-Value-Court-Enforceability-of-Noncompete?redirectedFrom=fulltext)

The full ban promised under Senate Bill 11 will allow Ohioans to fully reap the economic benefits of non-compete reform. However, if any sort of exemptions for executives or similarly employed professionals are considered, lawmakers should require employers to pay a portion of the employee's salary throughout the duration of the non-compete, a policy tool known as "garden leave." While this policy falls short of the ideal of a full ban, it would at least help confine the usage of non-competes to instances where employers truly have a significant economic interest in enforcing the agreement.

### ***Conclusion***

EIG appreciates the opportunity to provide testimony on this important issue. We hope that this bill results in far-reaching restrictions on non-competes to the benefit of workers, employers, and the Ohio economy. We are eager to work with state lawmakers on both sides of the aisle to advance this solution.