



## OHIO CHAMBER OF COMMERCE

March 5, 2025

### Before the Ohio Senate Judiciary Committee Opponent Testimony Senate Bill 11

Chair Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee, thank you for the opportunity to provide opposition testimony for Senate Bill 11 on behalf of the Ohio Chamber of Commerce. The Ohio Chamber is the state's leading business advocate representing over 8,000 companies that do business in Ohio.

The title of Senate Bill 11 reads: to enact sections 4119.01, 4119.02, 4119.03, and 4119.04 of the Revised Code to prohibit agreements that restrain engaging in a lawful profession or business after the conclusion of an employment relationship.

It is unclear if the legislation would continue to allow non-disclosure agreements, non-solicitation agreements, or standard confidentiality agreements, all that may contain restraints on the conduct of a former partner, owner or employee.

Senate Bill 11 also fails to recognize the body of case that has built up in Ohio's courts grappling with contracts informally referred to as noncompete agreements or NCAs. Prior to the 1975 *Raimonde* decision (*Raimonde v. Van Vlerah* 42 Ohio St.2d 21) the body of case law in Ohio pointed toward the use of the blue pencil doctrine in Ohio. That doctrine allowed a court to strike unreasonable provisions of a NCA if divisible but not amended or modified. Under this doctrine courts could strike offending language but not rewrite or add language. If the offending language was indivisible and unreasonable the entire NCA fails.

The *Raimonde* decision announced a new reasonableness test. The legal commentators at the time condensed this new framework as a three-prong test when reviewing NCAs. (1) The NCA provisions are no greater than what is required for protecting the employer; (2) does not impose an undue hardship on the employee; and (3) is not injurious to the public.

Over the years, legal scholars and court commentators began to see both a three-prong reasonableness test but also a second test that simply weighed a multitude of reasonableness factors. Some trial courts gave both tests equal weight while others viewed the factors as illustrative authority only. In 2024 the First Appellate District of Ohio decided *Kross Acquisition Co., LLC v. Groundworks Ohio LLC, et. al.* In that decision, the appellate court upheld the lower court ruling that invalidated, rather than modified, the NCA. The

lower court viewed the *Raimonde* holding on modification to meet reasonableness as a permissive step a court could take. This decision points to the use of the red pencil doctrine; no modification, simply invalidation.

I highlight this case law to show that Ohio does have restrictions on NCAs. Ohio's body of law has developed through court decisions instead of legislative enactment. While the courts are sorting through the standard or doctrine to use in review of a NCA, it would be untimely to simply enact a broad statutory law with no guidance for NCAs currently in place and on whether other types of agreements used to protect trade secrets, client lists, intellectual property or partnership or limited liability company goodwill are allowed or are simply off the table.

Senate Bill 11's proposed bright-line test does not factor in the different industries and sectors of the economy that are developing agreements that fit that industry or sector. The medical, legal, accounting, technological and finance sectors among many other business sectors are attempting to balance both the interest of the business or entity, the attraction and retention of talent and frankly, the avoidance of a lengthy court fight.

Drafters of NCAs are aware of past court decisions on geographical limitations, the duration allowed among other factors ruled on by the courts. If a party thinks a drafter overreaches in the language of a NCA, that party has remedies available to them in the courts for resolution.

In closing, the Ohio Chamber opposes Senate Bill 11 because it seeks to implement a one size fits all solution that fails to consider the unique characteristics of individual employment relationships, the needs of partnerships and limited liability companies and other business relationships across different industries and sectors of Ohio's economy.

Thank you again for the opportunity to provide this testimony. I will now try to answer any questions you may have for me.