



SENATE BILL 11 – (PROHIBIT POST-EMPLOYMENT AGREEMENT RESTRAINING CAREER OR BUSINESS)

WRITTEN OPPONENT TESTIMONY- OHIO SENATE JUDICIARY COMMITTEE

MARCH 5, 2025

Chairman Manning and members of the Ohio Senate Judiciary Committee, I am writing on behalf of the nearly 21,000 members of the National Federation of Independent Business in Ohio (NFIB) to convey our opposition to Senate Bill 11 which would ban all future non-compete agreements in the state.

By way of background, NFIB is a small business trade association founded in 1943 dedicated to representing the interests of small and independent businesses across our state and nation. NFIB's mission is to promote the right of our members to own, operate and grow their businesses. Our members come from all industry sectors and each of the 88 counties across Ohio.

SB 11 would establish a far-reaching, complete ban on the use of all employer-employee agreements that contain non-compete clauses. These agreements are vital to protect a business's investments and critical competitive business information. They are utilized by nearly every industry type across all sizes of businesses. Currently, only four states, Minnesota, Oklahoma, California, and North Dakota have similar full prohibitions against noncompete agreements in statute. The measure would apply to all classes of paid and unpaid workers, including independent contractors, and features no limitations on income or position held within a company or non-profit.

This legislation also creates a new cause of action for individuals to sue their current, or even future employers for alleged violations and enables submission of complaints to the Attorney General and Department of Commerce. A court may then issue an award to an aggrieved employee for attorney's fees, costs for actual and punitive damages, and injunctive relief, resulting in a business paying tens of thousands of dollars.

Most businesses invest heavily in their employees, teaching them skills and knowledge that eventually makes them a more marketable employee. Noncompete agreements can protect a business's investment in that employee for an agreeable period in order for the business to realize the benefit of the investment. In some instances, small start-ups use these agreements to ensure that their intellectual property is protected from unscrupulous individuals who may seek to assist a competitor with innovative or proprietary knowledge or information. Additionally, for firms that are very customer-facing, an individual employee has the ability to cause swift harm, with or without intent, to their former employer by encouraging clients or customers to follow them to their new employer.

While there have been examples of frivolous clauses by some employers nationally, the current system provides a remedy to such actions by granting Ohio courts the ability to determine what is a "reasonable" use of the practice and what is not. Court precedent states that the metric for an acceptable noncompete is the agreement is (1) no greater than is required for the protection of the employer; (2) does not impose an undue hardship on the employee; and (3) is not injurious to the public.¹ Thus, employers are already incentivized to limit the length of time and geographic reach of their non-competes to ensure they meet the reasonable standard and do not have these clauses severed. Ohio courts have provided ample case law over many decades on this matter which has established a fair balance on the use of these covenants.

Simply put, Ohio businesses should continue to have the ability to utilize non-compete agreements, if desired based on their circumstances, that are reasonable and justified by not causing undue harm to the employee who willfully signed the agreement upon acceptance of the job or position. NFIB thanks the committee for the opportunity to provide comments on SB 11 and respectfully urges opposition to this legislation.

Sincerely,



Cameron Garczyk
Assistant State Director – NFIB Ohio

¹ <https://casetext.com/analysis/non-competition-agreement-enforceability-in-ohio-and-beyond?page=27&sort=relevance&resultsNav=false&q=>