

To: Ohio Senate Judiciary Committee

From: Sam Peak, Policy Manager, Economic Innovation Group

Subject: Written Testimony on Senate Bill 11

Date: March 5, 2025

Introduction

Chair Manning, Vice Chair Reynolds, and Ranking Member Hicks-Hudson, and members of this committee, thank you for holding this third hearing 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 bipartisan organization devoted to forging a more dynamic and entrepreneurial U.S. economy. The widespread use of non-compete agreements deters job creation, and inhibits entrepreneurship, and is anathema to EIG's mission.

Currently, 4.3 million Ohioans working in the private sector are bound by non-compete agreements. Banning their use would sharply boost entrepreneurship and add over \$2.3 billion in Ohio worker earnings each year.¹

Senate Bill 11 will create a surge in Ohio entrepreneurship

The full non-compete ban offered by Senate Bill 11 will empower entrepreneurs to launch startups, create jobs, and invent new products in the state of Ohio. In previous testimony, EIG cited research finding that Hawaii's ban of non-compete agreements for tech workers caused entrepreneurship to surge by over 10 percent.²

But there is a wealth of other research that can attest to how banning non-compete agreements can boost innovation and create new jobs. For example, Johnson, Lipsitz, and Pei find that an average sized increase in non-compete agreement enforceability reduces patenting by 16-19 percent in a ten-year period, an amount comparable to a 10 percent increase in the tax price of R&D.³ Research from Reinmuth and Rockall finds that increases in non-compete enforceability reduces patenting by roughly 14 percent.⁴ Moreover, increases in non-compete enforceability makes inventors 67 percent more likely to leave

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

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

² 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/>

³ Matthew Johnson, Michael Lipsitz, and Alison Pei, "The Enforceability of Noncompete Agreements and Innovation: Evidence from State Law Changes." 2023 <https://www.nber.org/papers/w31487>

⁴ Kate Reinmuth and Emma Rockall, "Protect or Prevent? Non-Compete Agreements and Innovation." 2023 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4459683

their industries of expertise, where they are 30 percent less productive based on their innovative output.⁵

Not only would passing Senate Bill 11 mitigate this misallocation of talent from happening in the state of Ohio, but it would also generate new jobs by spurring the formation of new businesses. According to Johnson, Lipsitz, and Pei, an average sized increase in non-compete enforceability leads to a 3 percent decline in new business formation and a 7 percent decline in job creation at new businesses.⁶

According to a 2023 poll of 312 small business owners, 44 percent report having been subject to a non-compete agreement that made it more difficult for them to start or expand their enterprise, while 35 percent reported that they could not hire an employee due to a non-compete.⁷ These results strongly suggest that non-compete agreements harm entrepreneurs while protecting the incumbency of larger firms.

Senate Bill 11 would benefit Ohio workers and consumers alike

By increasing competition in both the labor and product markets, Senate Bill 11 would be a costless way to raise wages, boost economic output, and lower prices for Ohio consumers. In addition to consumers benefiting from the new inventions and businesses entering the market, banning non-compete agreements would likely reduce prices by reducing mergers and acquisitions. One study examining non-competes in the health care context found that a 10 percent increase in non-compete enforceability resulted in 4.3 percent higher physician prices.⁸

In addition to lowering prices, Senate Bill 11 would boost worker earnings, with studies showing that non-compete bans in states like Oregon increasing earnings for low wage workers by 3-4 percent and bans in states like Hawaii increasing earnings for high wage tech workers by 11-17 percent.⁹

While some opponents of non-compete reform argue that workers under non-competes have higher earnings than workers not subject to non-competes, this confuses correlation with causation and neglects to mention that workers subject to non-compete agreements tend to be more educated and, therefore, tend to have higher earnings. Findings from

⁵ Clemens Mueller, “How Reduced Labor Mobility Can Lead to Inefficient Reallocation of Human Capital,” 2022. https://conference.iza.org/conference_files/LaborMarkets_2022/mueller_c32517.pdf

⁶ *Supra*, Note 3.

⁷ “Small Business Majority, Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements,” 2023. <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

⁸ Naomi Hausman and Kurt Lavetti. Physician Practice Organizations and Negotiated Prices: Evidence from State Law Changes. <https://www.aeaweb.org/articles?id=10.1257/app.20180078>

⁹ Evan Starr, “Noncompete Clauses: A Policymaker’s Guide through the Key Questions and Evidence,” Economic Innovation Group, 2023. <https://eig.org/wp-content/uploads/2023/10/Noncompete-Clauses-A-Policymakers-Guide.pdf>

Balasubramanian, Starr, and Yamaguchi underscore that while workers subject to non-compete agreements earn more than those not subject to them, workers with only non-disclosure agreements have 5.4 percent higher earnings than workers subjected to all restrictive covenants—including non-competes, the broadest of employment restrictions.¹⁰

As EIG stated in previous testimony, a report from the Government Accountability Office strongly suggests that non-compete agreements are rarely used to protect proprietary information.¹¹ And to the extent that non-compete agreements can protect such information, other tools, such as trade secret law, patents, non-disclosure agreements, and non-solicitation agreements are already effective at safeguarding such information without the same downsides as a non-compete agreement.

Conclusion

EIG appreciates the opportunity to provide a second 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 and find areas of common ground.

¹⁰ Natarajan Balasubramanian, “Evan Starr, and Shotaro Yamaguchi,” 2023.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3814403

¹¹ Benjamin Glasner and Kenan Fikri, “GAO Report Underscores Excessive Use of Non-compete,” 2023, Economic Innovation Group. <https://eig.org/gao-noncompetes/>