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Delegate Melissa Wells, Chair
Government, Labor, and Elections Committee
145 Lowe House Office Building
Annapolis, Maryland 21401

Re: MSBA Business Law Section Council House Bill 1016 (Labor and Employment – Noncompete and Conflict of Interest Clauses – Employer Relocation) -- **Opposed**

Dear Chair Wells and Fellow Committee Members:

The Business Law Section Council (the “Section Council”) of the Maryland State Bar Association (the “MSBA”) annually reviews proposed legislation that may affect Maryland businesses. We do so as volunteers committed to the development and sound administration of Maryland business law. The Section Council respectfully submits this letter in opposition to House Bill 1016 (“HB 1016” or the “Bill”).

HB 1016 proposes to retroactively invalidate provisions in existing agreements that were lawful when entered into, based on subsequent events that may be outside an employer’s control or wholly unrelated to the employment relationship. Further, the Bill is overly broad and lacks clarity as to when it applies, leaving employers without guidance on compliance.

The Bill seeks to invalidate any existing, lawful noncompete agreement of an employer who “at any time during the employee’s employment, employs more than 30 employees, the majority of whom are located in Maryland” but thereafter “ceases to have the majority of its employees located in Maryland.” Countless circumstances could trigger this outcome, many entirely outside the employer’s control or wholly unrelated to the employment relationship that is subject to the noncompete. For example, an employer with 31 employees—16 in Maryland and 15 elsewhere—would see its noncompete rendered unenforceable under HB 1016 if any of the following to occur: (i) the retirement or resignation of one Maryland-based employee, (ii) termination of one Maryland-based employee, (iii) hiring one employee outside Maryland, (iv) acquiring a company with more out-of-state employees, or (v) one employee's internal transfer to a location outside Maryland.

In these instances, employers who negotiated noncompete provisions in good faith, in compliance with existing law, and often in exchange for valuable consideration provided to employees, would find their contractual rights nullified based on events occurring after contract formation and outside the employer’s control or otherwise unrelated to the employment relationships at issue. This retroactive application raises serious concerns about the impairment of existing contractual obligations and undermines the predictability and stability that businesses require when structuring employment relationships.

The Bill's ambiguity compounds these concerns. The terms “relocate” and “reorganize” are undefined and can mean many things in a business context: a formal change of principal office, establishing additional offices, changing reporting structures, corporate restructurings for tax or liability purposes, or transactional events like mergers and acquisitions. Employers may undertake any of these actions for legitimate business

reasons unrelated to workforce planning, yet each could trigger nullification of otherwise lawful noncompete agreements under HB 1016's application.

HB 1016 ties much of its operation to where an employee is "located" but again leaves this important word undefined. It is entirely unclear whether this means the employee's residence, the office to which the employee reports, or the location where the employee does the majority of work in the field. The lack of definition is further complicated by the advent of remote work. As another illustration, if an employer with an employee who previously worked in a Maryland office permits that employee to work a majority of the time from home, and such employee lives across state lines, HB 1016 may put that employer at risk of having suddenly forfeited the benefits of its noncompete.

This lack of clarity leaves Maryland businesses without clear guidance on what actions may trigger the Bill's application and the corresponding loss of important, negotiated contractual rights.

The Section Council supports policies that protect employees' ability to seek new employment opportunities. However, HB 1016 contains fundamental flaws that undermine its legitimate purpose and create arbitrary burdens on Maryland businesses. The bill would: (1) retroactively invalidate lawful contractual provisions; (2) nullify employers' bargained-for protections based on changes outside their control or unrelated to workforce planning—including retirements, voluntary departures, remote work trends, internal reorganizations, mergers and acquisitions, and multi-state expansions; and (3) fail to define key terms such as "relocates," "reorganizes," and "located" with sufficient clarity for compliance.

For these reasons, the Section Council respectfully urges an unfavorable report on HB 1016.

Respectfully submitted,

MSBA Business Law Section Council
I. DeAndrei Drummond, Chair

cc: Delegate Andrew C. Pruski