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SB 591 - Labor and Employment - Noncompete and Conflict of Interest Provisions - Application of Prohibition
Senate Finance Committee
March 2, 2023

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Madame Chair and members of the Committee, thank you for the opportunity to submit testimony in support of SB 591. My name is Donna S. Edwards, and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of Maryland's 300,000 union members, I offer the following comments.

Noncompete clauses and conflict of interest provisions restrict the ability of workers to find new employment. These agreements used to be reserved for executive level professionals in white collar professions, typically involving work with intellectual property. Increasingly, noncompete and conflict of interest clauses are being used to restrict all types of workers including food servers, hairdressers, tutors and camp counselors. These bans can even last for a year or two after employment, resulting in newly unemployed workers not being able to get a job in their field without moving or traveling long distances to work. Overuse of noncompete clauses has become such a problem that the Federal Trade Commission is considering a rule to ban them entirely, arguing that they rob workers of $300 billion in earnings each year.[1]

In a 1972 ruling in Becker v. Bailey, the Maryland Court of Appeals took up the issue of enforceable noncompetition agreements in employment contracts. The Court found noncompetition agreements in employment contracts to be enforceable provided they met several factors. Included among those factors is the requirement to not impose an undue hardship on the employee or disregard the interests of the public. We believe that many of these agreements do both. The current use of these agreements are a method to restrict a worker's ability to work, harming the dynamic nature of our economy, which operates on the principle that employers compete against each other to attract workers. By raising the minimum salary threshold to 150% of the minimum wage we can help workers escape these abusive practices.

[1] Federal Trade Commission, "FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition." January 5, 2023.

For well-compensated company leadership, who are privy to company secrets and strategies, noncompete agreements may make sense. However, applying them to a business's rank and file workforce is a violation of labor rights. These agreements negatively impact the rights and freedoms of workers and stifle free market competition.

SB 591 helps level the playing field for both workers and employers. We ask for a favorable report.