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February 17, 2025

Maryland General Assembly
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 658 Labor and Employment - Noncompete and Conflict of Interest Provisions (Support)

Honorable Madame Chair, Vice Chair and Committee Members,

First, I would like to thank Senator Ready for his sponsorship and support of SB 658 Labor and Employment - Noncompete and Conflict of Interest Provisions.

My name is Christine V. Walters, J.D., MAS, SHRM-SCP, SPHR. I am a former human resources practitioner and for the last 22 years have managed my own practice as an HR consultant and employment law attorney. I am before you today to ask for your support to correct what I believe was an inadvertent oversight in Maryland's noncompete law.

Maryland enacted HB 38 in 2019, establishing our first law that restricted employers' ability to enforce noncompete agreements. That law was silent as to whether the restriction applies only to agreements that take effect after an employee leaves an employer's employ or if it applies concurrently with current employment.

To assess the original intent, we look to the analysis under that bill's fiscal note that begins, "In a 1972 ruling in *Becker v. Bailey*, the Maryland Court of Appeals took up the issue of enforceable noncompetition agreements in employment contracts." In that case, the issue was whether, "…an employee's agreement not to compete with his employer **upon leaving the employment** will be upheld." (**emphasis** added) (268 Md. 93, 299 A.2d 835).

As you know, last year the law was amended via HB 1388. The fiscal note to HB 1388, and the bill itself both reference the enforcement of a noncompete agreement to not more than "one year **from the last day of employment**." (**emphasis** added) They contain no reference to concurrent employment. The fiscal note also referenced the Federal Trade Commission's final rule and read, "once the federal FTC final rule banning noncompetes takes effect … the bill has minimal effect on small businesses." So, let's look at the intent and language of the FTC's rule.

That rule was set to take effect in September 2024 and would have effectively banned noncompete agreements nationwide. And that FTC rule was expressly limited to, "A term or condition of employment that prohibits a worker from…(i) Seeking or accepting work in the United States with a different person **where such work would begin after the conclusion of the employment**…or (ii) Operating a business in the United States **after the conclusion of the employment**…" (**emphasis** added)

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All of these show that the intent of Marland's noncompete law, from its origin to today, is to apply only to post-employment noncompetes.

In addition, of all 50 states, my research reveals that only CA and DC restrict noncompete agreements as applied to some or most current employees.

Our proposed amendment clarifies this original intent by simply adding five (5) words to the current law. However, the impact to small business of those five words is meaningful. Imagine your furnace goes out. You call a home repair company. The home repair company sends an employee who repairs your furnace. As the employee leaves your home, they give you a personal business card. The employee suggests that if you have any more issues, you can call the employee directly, they will come back out and repair your furnace for less than you just paid the company. This happens across myriad industries and by employees of varying wage ranges. I have had clients from home repair to child and doggy day care; from home health care to hair and nail salons; from camps to schools giving gymnastics or music lessons, and more, contact me with similar stories. Every time a customer says "Yes" to the employee's suggestion, the employer loses business and revenue. And but for the employer having paid the wage of the employee to make that very first service call or make that very first contact – but for that – the employee and customer would most likely never have met.

I find most employers have no problem with a current employee working a second job. This bill does not change that. And if an employee wants to work for or provide services to an employer's current customer, they may do so when they leave that employer's employment, whether it is to work for someone else or launch their own business.

When I worked full-time in HR in healthcare, I worked a second part-time job in the evenings and weekends to save money to buy my first home. When I left my last job to become self-employed, I was blessed and honored that 100% of the clients I originated came with me. I am grateful for those opportunities. This bill does not change any of that. But concurrently working for a competitor, including oneself, directly conflicts with the employer's intent of hiring that employee in the first place – to provide gainful employment for that employee and to produce revenue for the employer.

As such, I respectfully ask for your support and vote in favor of SB 658. Please feel free to contact me should you have any questions or if I can provide more information.

Respectfully submitted,

Christine Walters

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