

My FINAL Written Testimony on Noncompete SB 658.pd

Uploaded by: Christine Walters

Position: FAV

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**)

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

Christine V. Walters, J.D., MAS, SHRM-SCP, SPHR

SB 658_MDCC_Courts-Labor and Employment - Noncompe

Uploaded by: Grason Wiggins

Position: FAV



MARYLAND
Chamber of Commerce

Senate Bill 658

Date: February 19, 2025
Committee: Senate Finance
Position: Favorable

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Senate Bill 658 (SB 658) clarifies Maryland law to establish that noncompete provisions are void only after an employee separates from an employer. In 2019, the Maryland General Assembly enacted House Bill 38, which did not clarify whether noncompete agreement restrictions apply only to agreements that take effect after an employee separates from an employer. To clarify what is commonly understood to be the case, SB 658 simply clarifies that noncompete restrictions apply after an employee separates from an employer.

SB 658's important change clarifies that employees and employers may enter into agreements that prohibit current employees from directly competing with their employer. For these reasons, the Maryland Chamber of Commerce respectfully requests a **favorable report** on **SB 658**.

MDCHAMBER.ORG

60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

SB658 Noncompete Testimony.pdf

Uploaded by: Justin Ready

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 19, 2025

SB 658 – Labor and Employment – Noncompete and Conflict of Interest Provisions Act of 2025

Chair Beidle, Vice Chair Hayes, and members of the Finance Committee,

Senate Bill 658 would alter the noncompete and conflict of interest provisions in employment contracts or similar documents to clarify when they are dissolved all employees apart from certain workers licensed under the Health and Occupations Article.

Under current law, the noncompete provision was not entirely clear on when it was dissolved. This bill is simply clarifying that immediately upon separation from the employer the noncompete becomes null and void.

For employees with contracts licensed under the Health Occupations Article that provide direct patient care and earn over \$350,000 dollars in annual compensation the noncompete may not exceed one year nor have a geographical restriction exceeding 10 miles from their previous place of employment.

This bill is intended to better explain that non-competes and other conflict of interest provisions only last for the duration of employment, except under the special exception for those specific Health Occupation employees. There have been numerous instances of confusion based on the wording of the current law, which will hopefully be resolved through this minor change in language.

I respectfully request a favorable report on Senate Bill 658.

SB 658 - Non Compete Legislation Clarification - F

Uploaded by: Stacey Maud

Position: FAV

Testimony in Support of SB 658

Maryland Senate Finance Committee

Stacey Maud | General Manager

Ace Handyman Services Annapolis, Eastern Shore, and Ocean City

Chair Beidle, Vice-Chair Hayes, and esteemed members of the Senate Finance Committee:

Thank you for the opportunity to testify today in support of SB 658. My name is Stacey Maud, and I am the General Manager of Ace Handyman Services Annapolis, Eastern Shore, and Ocean City. Our business is part of the Ace Home Services division, which was established by Ace Hardware five years ago with the goal of providing reliable, high-quality handyman services. As a franchisee, we are required to maintain non-compete agreements with our employees. These agreements are essential to protecting our business model, the significant investments we make in our employees and customers, and the integrity of our services.

Our craftsmen work under our license and insurance, which ensures customers receive fully protected, professional services. We cover all the overhead costs associated with permits, bonding, and general liability insurance. In addition, we provide vehicles, tools, equipment, and steady marketing to secure our customer base. These marketing expenses alone are significant, and our investment in customer relationships is critical to our ongoing success.

It is important to note that we do not prohibit our craftsmen from taking on side work. However, we do require that they do not take our customers or use our brand, vehicles, or equipment in their side work. Violating these requirements undermines the investments we make to build our reputation and ensure high-quality service for our customers.

One notable example involved a job where we were hired to remove a through-the-wall air conditioner. After completing the removal, the customer hired our former handyman to return and install a window. The window was improperly sized, leaving a four-inch gap in the wall. This left the customer with a botched job and no recourse, damaging our reputation in the process.

Our craftsmen regularly report that customers often solicit them for work. Fortunately, our employees are transparent about these requests because they appreciate the environment we provide. They choose to work for Ace because we offer competitive pay, steady work, and consistent hours—allowing them to enjoy their evenings and weekends without relying on additional income from these types of jobs.

Just as intellectual property protections exist for pharmaceutical and technology companies, businesses like ours deserve similar protections for the investments we make in our employees and operations. Without the safeguards that SB 658 would provide, we remain vulnerable to unfair competition, customer losses, and reputational damage due to employee actions that conflict with or compete with our business operations.

For these reasons, I respectfully urge you to support SB 658. Thank you for your time and consideration.

Sincerely,

Stacey Maud

General Manager

Ace Handyman Services Annapolis, Eastern Shore, and Ocean City

PJC - SB658 - Unfav.pdf

Uploaded by: Amy Gellatly

Position: UNF

SB 658: Labor and Employment – Noncompete and Conflict of Interest Provisions

Hearing of the Senate Finance Committee, February 19, 2025

Position: Unfavorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project strives to promote dignity in the workplace and envisions a society that guarantees just working conditions, including the fundamental rights to be paid fully and fairly, to join forces with other workers for the promotion and protection of their mutual economic and social interests, to have equitable opportunities to work and advance, and to work in conditions that are safe, healthy, and provide adequate time for leisure and rest.

The PJC **opposes SB 658**, which would narrow Maryland's existing worker protections.

Noncompetes are prohibited in many jobs and industries in Maryland.

- In 2019 the General Assembly passed SB 328, which provided that noncompetes are generally void for low-wage workers (defined at the time, as workers making less than \$15/hour).
- In 2023, the General Assembly passed SB591, which ensured that the protections of SB 328 would continue to protect low-wage workers even while Maryland's minimum wage continued to rise to account for inflation.
- We supported these restrictions on noncompete clauses because noncompetes:
 - decrease job mobility,
 - lower wages, and
 - hinder entrepreneurship.
- In January 2023, the Federal Trade Commission noted that if noncompete agreements were eliminated, the earnings of American workers would increase by nearly \$300 billion per year.¹

SB 658 attempts to carve out a major loophole in Maryland's protections.

- The current law prohibits all noncompete agreements for workers earning up to 150% of Maryland's minimum wage as well as for all workers in certain positions (for example licensed veterinary technicians).
- SB 658 would limit this prohibition to noncompete agreements that take effect "on separation from the employer."
- This limitation would allow employers to restrict workers' ability to achieve financial stability, such as by holding two part-time jobs at the same time. There is no justification to undermine workers' autonomy and freedom in this way.

For the foregoing reasons, the PJC **OPPOSES SB 658** and urges an **UNFAVORABLE** report. Should you have any questions, please contact Amy Gellatly at gellatlya@publicjustice.org or (410) 400-6943.

¹ <https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking>.

2025 MdAPA SB 658 Senate Side.pdf

Uploaded by: Robyn Elliott

Position: UNF



To: Senate Finance Committee

Bill: Senate Bill 658 – Labor and Employment – Noncompete and Conflict of Interest Provisions

Date: February 19, 2025

Position: Oppose

The Maryland Academy of Physician Assistants opposes *Senate Bill 658 – Labor and Employment – Noncompete and Conflict of Interest Provisions*. Currently, the law prohibits noncompete agreements for practitioners making less than \$350,000 annually and entering into new employment. The proposed bill would limit the prohibition to practitioners who had separated from their employer. In other words, noncompete agreements would only be prohibited when practitioners had left their place of employment. Noncompete would be allowed to apply to secondary employment.

According to the U.S. Bureau of Labor Statistics, physician assistants make between \$41.48 and \$82.11 an hour.ⁱ Some physician assistants need secondary employment to meet the needs of themselves and family members. MdAPA is concerned that this legislation will unnecessarily restrict the ability of physician assistants to have more than one job.

We ask for an unfavorable report. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net.

ⁱ <https://www.bls.gov/oes/current/oes291071.htm>