

Testimony in support of LD 1496, An Act to Prohibit Noncompete Clauses

Arthur Phillips, Maine Center for Economic Policy
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Good afternoon, Senator Tipping, Representative Roeder, and members of the Committee on Labor and Housing, my name is Arthur Phillips, and I am an analyst at the Maine Center for Economic Policy. I am here to testify in support of LD 1496, which will offer our workers greater economic freedom and enable them to optimize their contributions to our economy.

As we know, in 2019, Maine banned noncompete clauses for workers earning less than 400% of the federal poverty level, which last year covered those earning less than \$54,360. Earlier this year, the Federal Trade Commission proposed to ban noncompete clauses outright for all workers nationwide.ⁱ Shortly thereafter, a bipartisan group of US Senators introduced the Workforce Mobility Act to nearly outlaw these agreements.ⁱⁱ MECEP supports these steps; however, it may be years until federal legislation or rulemaking come to fruition, and we should not wait to empower Maine's workers and stimulate innovation.

Noncompete agreements were originally meant to protect a business's trade secrets and confidential information; however, their use has become much more commonplace to extend beyond such scenarios. These agreements disproportionately impact women and people of color for a variety of reasons, including those groups' lesser willingness to violate the terms of such an agreement and lesser likelihood of negotiating the terms of their employment. In areas where there is one leading employer in an industry, these agreements can become particularly harmful. Noncompete agreements contribute to what economists call monopsony, where a small number of buyers exert control over labor or any other market, scenarios in which noncompete agreements empower large employers to offer workers lower compensation.

It is widely understood that noncompete agreements are harmful to workers, and not only those with lower earnings. However, it is sometimes underappreciated that it also restricts entrepreneurship and innovation. Research has shown that the free movement of skilled knowledge workers contributes significantly to innovation. For example, studies have attributed Silicon Valley's dynamism in part to the fact that California did not enforce noncompete agreements.ⁱⁱⁱ This bill would enable workers to start their own firms and contribute to our economy's dynamism more freely.

We think this bill sensibly builds on past steps our state has taken and we urge you to support it. Thank you and I welcome any questions you may have.

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Notes

ⁱ FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition, January 5, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>

ⁱⁱ Workforce Mobility Act of 2023, introduced 2/1/2023, <https://www.congress.gov/bill/118th-congress/senate-bill/220>

ⁱⁱⁱ Ketan Ahuja, “Innovating Antitrust Law: How Innovation Really Happens and How Antitrust Law Should Adapt,” Roosevelt Institute, October 2022, https://rooseveltinstitute.org/wp-content/uploads/2022/09/RI_InnovatingAntitrustLaw_202210.pdf