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**Testimony of
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On behalf of the
Maine State Chamber of Commerce
Before the Joint Standing Committee on Labor and Housing
in opposition to
L.D. 1496, An Act to Prohibit Noncompete Clauses**

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Sen. Tipping, Rep. Roeder and members of the Joint Standing Committee on Labor and Housing, my name is Peter Gore, and I am a Government Affairs Consultant with Maine Street Solutions, and I am here on behalf of my client, the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses speaking to you today in opposition to **L.D. 1496, An Act to Prohibit Noncompete Clauses**

In 2019, during the 129th Legislative session, the legislature passed, and the Governor signed Public Law, Chapter 513, which had been **L.D. 733, An Act to Promote Keeping Workers in Maine**. As enacted into law, it limits and in certain instances, prohibits the use of “non-compete” agreements between certain employers and employees in Maine. In Maine *now*, certain types of workers who make less than 400% of federal poverty cannot be made to sign as a condition of hire, or otherwise, noncompete agreements, which are contracts entered into by an employee prohibiting the employee from working in the same or a similar profession within a time certain after leaving employment with the employer and within a specified geographical area and outlines a number of restrictions that would be enacted as part of the bill.

At the time the bill was introduced in 2019, and debated by this committee of jurisdiction, there was little to no evidence there were problems with the use of or requirement for non-compete agreements in Maine. To our knowledge nothing has changed to alter this understanding since then. As such, we saw the law as unnecessary. LD 1496 goes further still, and with very narrow exceptions, if passed would effectively eliminate the use of non-compete agreements in Maine. We are opposed to this legislation.

Currently, certain non-compete agreements are still allowed in Maine, and we believe for good reason. Those that protect an employer’s trade secrets, that protect an employer’s confidential information that is not a trade secret, and agreements that protect an employer’s goodwill, remain permissible under law. However, LD 1469 strikes these protections. We would ask, how does an entrepreneur build a business, especially one that is or could be considered

“cutting edge” without the ability to safeguard their investment? The owner invests, and cultivates their business, hiring workers as they go along and expand. Lacking some form of non-compete agreement to protect their business, the employee(s) gain knowledge of the business, maybe the intricate aspects of the business, and under LD 1469, could literally walk across the street and set up a competing shop the next day. Is this fair? The fact is non-competes serve a need and purpose, and we do not think the state as a matter of policy, should eliminate their use here.

Furthermore, non-compete agreements are limitations on ex-employees right to earn a living, and as such the courts strictly apply certain tests. The outcome of the courts understanding of these tests determines the validity of the non-compete contract. First, the employee must receive something of value in exchange for the promise to refrain from competition. Depending upon when in the employment relationship the agreement is made, this item of value could be the job itself (when the agreement is made at the start of the employment relationship) or, if later in the relationship, it could be a promotion or annual bonus or other consideration of value to the employee.

The second test the courts apply is that the agreement protects a legitimate business interest of the employer. These could include such interests as trade secrets, confidential information about operations or business practices, customer lists, or future plans for products or marketing initiatives. The employer has the burden of proof when it comes to determining to these business interests are reasonable. Last, the agreement must be reasonable in scope, geography, and time.

According to information provided by the Maine Department of Labor in 2019, the following information regarding how courts have interpreted the use of non-compete agreements is as follows:

According to Lawserver (<https://www.lawserver.com/law/articles/non-competition-agreements-in-Maine>), Maine Courts have found the following examples to be valid and invalid, respectively: “Examples of non-compete agreements that Maine courts have found to be reasonable include:

A 100-mile radius restriction against the former salesperson of a pipe and valve distributor where the distributor sought to enforce the restriction only as to two facilities instead of any of its facilities, as the agreement was written.

A 3-year restriction against the former salesperson of a pipe and valve distributor from contacting, soliciting, or doing business with any entities that were customers while the salesperson worked for the former employer because it was reasonably necessary to protect the employer’s confidential information.

A 16-month, 2-mile radius restriction that the employer sought to enforce against a former employee optometrist even though, as written, the agreement could have covered a larger area. The courts have found the following restrictive covenants unreasonable:

A 7-year, 60-mile radius restriction on the sale of insurance. The restriction was mandated by a lower court relating to the disposition of an insurance agency during a divorce proceeding.

A 5-year multi-city restriction against a real estate agent where the agent had only operated in one town.

It is our opinion that the use and application of non-compete agreements is well established in the Maine courts. To our knowledge, the use or requirement of non-competes is relatively limited in Maine, and legislation such as that proposed in LD 1496 is unnecessary and produce unintended consequences in the workplace. It is for these reasons we think the bill is a solution in search of a problem and should be rejected. Thank you for your time.