

NELA-NJ – TESTIMONY OF ALAN H. SCHORR, ESQUIRE

Senate Labor Committee – September 29, 2022

BILL 1410 – Non-Competes

I speak today as the legislative liaison for the National Employment Lawyers Association of New Jersey. We are the largest Bar Association in New Jersey representing the rights of employees in employment disputes.

Covenants not to compete are being abused by New Jersey businesses, and the damage to our employees and industries is irreparable. When non-competes were first used in business transactions, they were sensible and narrowly-tailored. If I buy your shoe store, you have to agree that you will not open up a new shoe store within 5 miles. Today, however, New Jersey businesses are misusing covenants not to compete in order to prevent employees from advancing their careers. Employees become indentured servants, unable to get another job in their industry without forfeiting a year or two of the career. Businesses like Jimmy John's feel that they can prevent their sandwich makers from going to McDonald's if they get fired.

There is a reason that so many states have outlawed non-competes within the past few years. In addition to California, which bans all non-competes, they are now entirely outlawed in North

Dakota, the District of Columbia, and Oklahoma, and severely restricted in Maine, Maryland, New Hampshire, Rhode Island, and Washington, and within the past six months in Oregon, Nevada, and Illinois. There is an important public policy reason for this.

Non-competes not only prevent talented employees from being able to move and grow and the industry, they prevent businesses from being able to acquire up and coming talent. The opponents of this Bill warn that restricting non-competes will drive businesses away. In fact, the opposite is true. California, which has had an outright ban for decades, has become the world's engine of innovation specifically because business are able to acquire talent without fear of being sued. As a result, both businesses and talent leave states like New Jersey to go to California, where they can flourish and grow. New Jersey will continue to suffer a brain drain if it does not quickly take steps to protect innovative businesses and their employees. If every business employs non-competes, then no business can acquire talent. The entire economy stagnates. Wages are kept artificially low because employees can no longer seek a higher paying job so there is no reason for employers to pay more money. The entire employee at-will paradigm is disintegrating.

There is opposition from large medical groups who want to continue to restrict doctors from being able to go to other practices. But we need to consider that harm that these non-competes inflicts on New Jersey patients, who are them deprived of being able to treat with the physician of their choice. My own mother, who recently died from COPD, had a 20 year relationship with her pulmonologist. He knew everything about her, and she trusted him. He went to another

practice and advised my mother he could no longer treat her. She spent the last painful year of her life being shuffled about a group of strangers who didn't know her or care about her. There are a million stories of patients deprived of their gynecologist, psychiatrist, cardiologist, or family medicine doctor of their choice.

The opponents of this Bill warn that it will generate additional litigation. But the larger problem is that non-competes are rarely enforced by Courts. Most often, an employer, upon learning that an employee has gone to work for a competitor, has its attorney send a cease and desist to the new employer threatening to sue the new employer. The new employer, fearful of litigation, fires the new employee, leaving the employee unemployed and unable to work in his or her chosen profession for up to two years, and dependent on unemployment. Why should New Jersey taxpayers be forced to pay for unemployment so that business can prevent competition?

Non-competes are not necessary to protect trade secrets. There are trade secret agreements for that. It is not necessary to protect customer lists. There are confidentiality agreements for that. The only thing that non-competes do is prevent competition, unfairly reduce wages, and harm New Jersey's ability to attract and keep innovative business and employees.

It is imperative that the Legislature takes action now to curtail to abuse of these damaging restrictive covenants. This Bill provides sensible restrictions and is at least a step toward providing much needed relief.

