

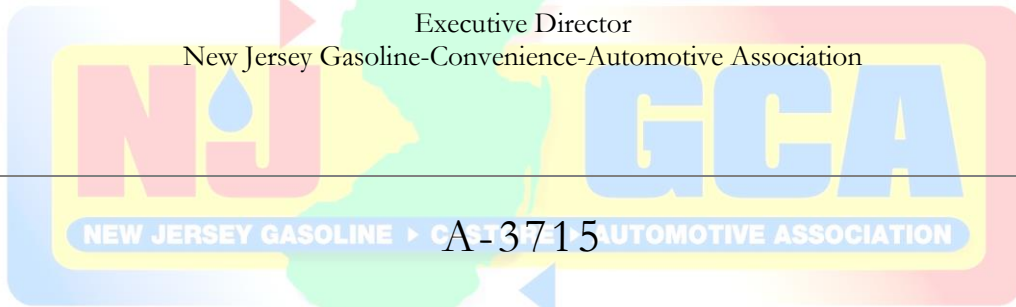
220TH NEW JERSEY LEGISLATURE
ASSEMBLY LABOR COMMITTEE
HON. JOSEPH EGAN--CHAIR

TESTIMONY

SAL RISALVATO

Executive Director

New Jersey Gasoline-Convenience-Automotive Association



OPPOSE

May 19, 2021

TRENTON, NJ 08625

Testimony of Sal Risalvato
A-3715: Oppose

Chair Egan, members of the Committee, on behalf of the New Jersey Gasoline, Convenience, Automotive Association (NJGCA) I ask that you oppose this bill as it is currently written. NJGCA represents several hundred independent auto repair businesses across this state, and many will be hurt by this bill.

While the advocates of this bill do seem to make a fair case that the use of non-compete agreements has expanded too far, I believe that this bill as currently constructed will move the marketplace too far in the opposite direction and remove almost completely a fair type of protection that exists for employers.

The specific situation that I am concerned will be outlawed by this bill is one in which the owner of an auto repair business asks his mechanic to sign an agreement saying that if the mechanic ever leaves this business, either to open their own or go to work for a competitor, that mechanic is prevented from simply calling the owner of every car that ever came into their previous employer's garage and solicit them for business.

I do not believe there are any cases in which an independent repair shop owner asks a technician to sign an agreement wherein they promise that if they ever leave the business, they agree to not fix cars at all for a certain period of time. If there are or were to be, I believe it would be fair to ban such an unfair and impracticable agreement. Indeed, the proliferation of such a practice would likely hurt the small business community as the labor market becomes constricted. One of the biggest challenges for repair facilities currently is finding qualified technicians to make repairs.

Small businesses have enough to worry about without needing to fear that anyone they hire will turn around on any given day and work to completely gut their business. A legal agreement to prevent that, offered fairly, openly, and at the start of employment should not be banned by the State.

The bill does seem to imply that it would still be allowable for an employer to use an "alternative agreement, including but not limited to [...] an agreement not to solicit or transact business with customers, clients, referral sources, or vendors of the employer". However, the definition used for "restrictive covenant" is "an agreement between an employer and an employee [...] under which the employee or expected employee agrees not to engage in certain specified activities competitive with the employee's employer after the employment relationship has ended". The phrase "certain specified activities" appears broad enough to cover even the basic type of agreement that I have described above.

If the intention of the bill is to continue to allow an alternative agreement that is purely non-solicitation, then amendments must be made to clarify this. Exempting such a non-solicitation agreement from the requirements for a “restrictive covenant” under the bill would eliminate NJGCA’s opposition to A-3715.

We are also concerned that the language may be broad enough that it includes non-competition agreements made in connection with the sale of a business. If someone buys “Joe’s Auto Repair Shop”, they are also looking to buy continuing access to the customer base that has been built up. The value of the business is diminished if there is no longer a way to prevent “Joe” from pocketing the sale price and then opening up another shop half a mile away and soliciting all his old customers to come with him. We believe clarifying language should be added to make it explicit that non-competition agreements continue to apply to owners of a business that is being sold, and under terms substantially similar to what is legal today.

I offer one other small suggestion to improve this bill. It requires every employer in the state post a copy of the act or a DOL approved summary. This seems unnecessary for all those employers which do not or will not make use of these types of agreements in any way for any of their employees. Perhaps it would be better to amend the requirement so that the protections only need to be posted by employers who use the types of agreements covered in this bill in some way, rather than requiring yet another aspect of employment law be posted on an already oversaturated bulletin board.

After this Committee passed similar legislation sponsored by Asw. Quijano just over a year ago, NJGCA worked with other coalition partners led by the NJ Business & Industry Association (NJBIA) to come up with compromise language that would satisfy our concerns while still expanding protections for workers. We stand by that proposed language and if the bill were amended to match that language, we would be willing to support it.

But without changes, I do not believe that this bill should be moved past this Committee. I ask that you vote NO on this bill today.

Thank you.