



NJ Gasoline, C-Store, Automotive Association
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September 29, 2022

To: Senate Labor Committee

From: Eric Blomgren, Chief Administrator & Director of Government Affairs

New Jersey Gasoline, Convenience Store, Automotive, Association

Re: Oppose S-1410 unless amended, “Limits certain provisions in restrictive covenants and limits enforceability of restrictive covenants.”

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, we 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.

We fully support the proposed compromise language suggested by the New Jersey Business & Industry Association (NJBIA) as language that would satisfy our main concerns while also protecting the workers who need it.

The specific amendment that I want to call attention to is a protection for restrictive covenants that are tied to the sale of a business. If “Joe” of “Joe’s Auto Repair Shop” decides to sell his business to one of his mechanics, that new owner is looking to buy continuing access to the customer base that has been built up, and is paying a higher price for it. If “Joe” opens up “Joe’s *Original* Auto Repair Shop” down the street, then the new owner will have significantly overpaid for the location and may not be able to climb out of debt he has taken on to buy a location that may lose a significant portion of its expected business.

Conversely, if a shop owner is looking to sell his operation, the fact that he does not even have the option of entering into a non-compete agreement because of this bill, means that the overall value of his business has been diminished, since he cannot legally guarantee to a potential buyer that he will not turn around and open a competing business and solicit all his old customers to come with him. This would be especially frustrating if his full intention is to sell the business he built up and use the funds to retire.

The NJBIA language specifically includes this section:

Nothing in this act shall render void or unenforceable any of the following regardless of whether the current or former employee falls into a category identified in section 3 of this act: any non-competition agreement made in connection with the sale of a business or substantially all the operating assets of a business, or otherwise disposing of the ownership interest of a business, or a division or subsidiary thereof, when the party restricted by the non-competition agreement is an owner of, or member or partner in, the business that will receive significant consideration or benefit from the sale or disposal

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. 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.

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.

Thank you.

