The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to employee non-competition agreements.

PETITION OF:

<table>
<thead>
<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
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<tbody>
<tr>
<td>William N. Brownsberger</td>
<td>Second Suffolk and Middlesex</td>
</tr>
<tr>
<td>Michael Barrett</td>
<td>Third Middlesex</td>
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<tr>
<td>Patricia D. Jehlen</td>
<td>Second Middlesex</td>
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<tr>
<td>Lori A. Ehrlich</td>
<td>8th Essex</td>
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The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to employee non-competition agreements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Whereas the Commonwealth of Massachusetts has a significant interest in its economic competitiveness and the protection of its employers, and a strong public policy favoring the mobility of its workforce; and

2 Whereas the Commonwealth of Massachusetts has determined that an employee noncompetition agreement restricting an employee’s mobility for longer than six months is a restraint on trade and harms the economy;

Therefore, be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The general court finds and declares that:-

(a) the Commonwealth of Massachusetts has a significant interest in its economic competitiveness and the protection of its employers, and a strong public policy favoring the mobility of its workforce; and

(b) the Commonwealth of Massachusetts has determined that an employee noncompetition agreement restricting an employee’s mobility for longer than six months is a restraint on trade and harms the economy.

SECTION 2. Chapter 149 of the General Laws, as appearing in the 2006 Official Edition is hereby amended by inserting after section 24K the following section:-
Section 24L. (a) An employee noncompetition agreement that restricts an employee’s mobility for no longer than six months shall be presumed reasonable in duration.

(b) An employee noncompetition agreement that restricts an employee’s mobility for longer than six months shall be presumed unreasonable in duration.

(c) An employee noncompetition agreement that is determined by a court to be unreasonable in duration shall be unenforceable, unless: (i) the employee has breached his or her fiduciary duty to the employer; (ii) the employee unlawfully taken, physically or electronically, property belonging to the employer; or (iii) the employee has, at any time, received annualized taxable compensation from the employer of $250,000 or more.

(d) When any of the three exceptions in section (c) above are present, a court may enforce the employee noncompetition agreement for any duration determined by the court to be appropriate.

(e) Employee noncompetition agreements do not include (i) covenants not to solicit or hire employees of the employer; (ii) covenants not to solicit or transact business with customers of the employer; (iii) noncompetition agreements made in connection with the sale of a business or substantially all of the assets of a business, when the party restricted by the noncompetition agreement is an owner of at least a ten percent interest of the business who received significant consideration for the sale; (iv) noncompetition agreements outside of an employment relationship; (v) forfeiture agreements; or (vi) agreements by which an employee agrees to not reapply for employment to the same employer after termination of the employee.

SECTION 3. This act may be referred to as the Noncompetition Agreement Duration Act and shall apply to employee noncompetition agreements executed on or after January 1, 2014.