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Testimony of Secretary Gregory Bialecki  
Joint Committee on Labor & Workforce Development  
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Dear Madam Vice Chair Coakley-Rivera and committee members:

Thank you for the opportunity to appear before you today. I am here to express the strong support of the Patrick Administration for substantial reform of the current rules on the enforceability of non-competition agreements in Massachusetts.

A key element of the Patrick Administration's economic development strategy has been to build on the strength of our world-class innovation economy. A key measure of success for our economic development and job creation policies and programs ought to be whether those policies and programs effectively support the innovation and entrepreneurship that has been our critical competitive advantage for so many years.

There is now a growing body of study and analysis reaching the conclusion that the enforcement of non-competition agreements can adversely affect an innovation economy. Economic research by Professor Richard Marx of Harvard and MIT, among others, has shown that the enforcement of non-competition agreements can have a demonstrable negative effect on the mobility of technology workers, especially of those with advanced, specialized skills. This can adversely affect our innovation economy in a variety of ways.

Job creation in the innovation economy often occurs in sudden large bursts. At their moments of greatest growth, Google and Facebook each hired literally thousands of workers in a short period of time. Providing the talent needed to support such explosive growth may be considerably more difficult if employees are legally unable to move between jobs in the innovation economy. And if Massachusetts is not able to support such growth, then the most effective job creating companies may be pushed to grow to scale elsewhere.

The enforcement of non-competition agreements (often called "non-competes") may also limit the number of individuals who will leave their existing employment to lead new start-up firms of

their own, another essential ingredient of a vigorous innovation economy. Alternatively, the rigorous enforcement of non-competes in Massachusetts may cause those individuals to leave the state to begin a new start-up firm or to pursue another new career opportunity, an equally unhappy outcome for the Commonwealth. Retaining our best talent is already a major challenge for the state.

In addition to its adverse effects on the overall economy, the enforcement of non-competition agreements also raises important questions of individual fairness. We have been presented with many examples of non-competes blocking the ability of individuals from taking advantage of job opportunities that would advance their careers or help them to better support their families without any apparent harm to the business prospects of their current employers.

You will certainly hear today from businesses and business groups who would prefer to keep the current legal arrangements regarding non-competes intact. It is perfectly understandable why any individual business would prefer to maintain the status quo. The current law makes it considerably harder for employees to leave their current employers, whether due to the actual enforcement of a non-competition agreement, or more frequently, just due to the threat of enforcement. While that may be convenient for employers, it is not at all clear that it is necessary to their business success. Many of our large Massachusetts employers also have significant operations in California, where non-competes may not be legally enforced, and their business units are succeeding and thriving there. Moreover, while non-competes may be helpful to any given individual company, that does not necessarily mean that they are good for the overall health of the Massachusetts economy. And it is the overall health of the Massachusetts economy that should be the deciding factor in your consideration of this issue.

One of the bills pending before you today calls for changes to our current rules regarding the enforceability of non-competes. The other calls for the end to such enforceability. Over the last several years, the Patrick Administration has suggested that the preferable course of action for Massachusetts might be to find ways to limit the most harmful effects of non-competition agreements without eliminating them outright. We applaud the efforts of many, including Representative Brownsberger and Representative Ehrlich, to find such a middle ground. This topic has been the subject of discussion for several years now, however, and it is no longer clear that any broad consensus can be reached on reform of non-competes. Indeed, it is no longer even clear that those who prefer the status quo are all that interested in reaching such a consensus. But there is in fact a pressing need for serious change. We urge all stakeholders to engage in a serious conversation about the shape and scope of that change. If the relevant stakeholders are not prepared to do so with a sense of urgency, then we ought to consider whether the outright elimination of enforceability altogether is the best course of action for the Massachusetts economy.