

UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Office of Policy Planning

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or starting a business. Many entrepreneurs and small businesses also described how noncompetes prevented them from starting a business or hiring qualified workers. Many of the comments were from workers, businesses, and others in South Carolina. You can find such comments on the FTC's public docket at Regulations.gov. 7

The evidence shows that noncompetes are used extensively, including even for low-wage workers. The Commission found that nationwide, approximately one in five workers—or thirty million Americans—are bound by noncompetes. One survey found that 35% of workers without a bachelor's degree and 33% of workers earning less than \$40,000 per year have worked under a noncompete at some point in their lives. Another analysis of the same data found that 53% of workers covered by noncompetes are hourly workers.

Noncompetes restrict workers' fundamental freedom to leave for a better job or to start their own business. Based on empirical research and public comments, the Commission found that noncompetes are exploitative and coercive for all workers except for senior executives. For almost all workers, non-competes are unilaterally imposed, typically without negotiation or compensation, and force workers to remain in jobs and bear significant harms and costs...¹¹

Based on the extensive empirical evidence, the Commission found that noncompetes tend to negatively affect competitive conditions in both labor and product and service markets. ¹² The Commission found that because noncompetes decrease mobility and competition in the labor market, they suppress wages not only for the workers subject to them, but also for workers who are not subject to them. ¹³ The Commission estimates that its rule would increase workers' earnings by \$400-\$488 billion over the next decade, and an average worker will earn \$524 more per year. ¹⁴

The Commission further found that noncompetes negatively affect competitive conditions in markets for products and services, inhibiting new business formation, decreasing innovation, and raising prices. ¹⁵ The Commission estimates that its rule would increase new business formation by 2.7%, creating over 8,500 new businesses each year. ¹⁶ Innovation would also increase, leading to about 17,000-29,000 new patents each year on average. ¹⁷ Through increased competition and innovation, consumers would have access to better products and lower prices. ¹⁸ For example, the Commission estimates that the rule

⁶ *Id.* at 38344-45, 38389-94.

⁷ The comments are available and searchable by state at Regulations.gov, https://www.regulations.gov/document/FTC-2023-0007-0001/comment.

⁸ 89 Fed. Reg. at 38343, 38346.

⁹ *Id.* at 38346.

¹⁰ *Id*.

¹¹ Id. at 38374-79.

¹² The Commission assessed the numerous empirical studies that have been conducted on noncompetes and explained the weight it gave to each study. *See id.* at 38374-424; *see also id.* at 38372-74 (explaining the Commission's analytical framework for assessing the empirical evidence).

¹³ Kdreakd 86348B 46Fd[-)-4 (7)6 (9 -0.001 Tw 1.651 0 Td[i)-337 (t)-5.170006 Tw,78 -0.001 Td() Ti0.002 Tc -0.0022 Td[38)12 (372)TJ

would reduce health care costs by \$74-\$194 billion over the next decade in reduced spending on physician services. ¹⁹
In adopting the rule, the Commission assessed employers' claimed justifications for noncompetes and found that employers have several viable alternatives that do not impose the same burdens on competition. ²⁰

narrower subset of noncompetes than the FTC's rule. 31

In short, the FTC's rule does not negate the value of state laws that restrict noncompetes. Rather, such laws can play an important role in the battle against harmful noncompetes.

I hope that the Commission's research, analysis, and findings concerning noncompetes are valuable to you as you consider H.B. 3273. Please do not hesitate to reach out if my office can be of further assistance.

Sincerely,

Hannah Garden-Monheit

Hannah Garden-Monheit Director Office of Policy Planning

³¹ *Id*. at