



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning

January 14, 2025

VIA ELECTRONIC MAIL

The Honorable Rebecca Saldana
Senator
The Washington Senate

The Honorable Yasmin Trudeau
Senator
The Washington Senate

Re: S.B. 5023

Dear Senators Saldana and Trudeau:

I write this letter as the Director of the Federal Trade Commission's ("FTC") Office of Policy Planning, the FTC office that provides advocacies and submits filings supporting competition and consumer protection principles to state legislatures, regulatory boards, and officials.

I understand that the Washington legislature is considering S.B. 5023 ("the Bill") that, it3 Tr 2 domestic workers to seek any other form of domestic work postemployment. On April 23,

2024, the Commission approved a final rule under the FTC Act banning noncompete clauses.¹ The rule has not come into effect at this time, because a Texas district court issued an order stopping the FTC from enforcing the rule. The FTC has appealed that decision.²

I write to highlight a number of the Commission's evidentiary findings that you may find informative as you consider the Bill. This letter also explains that, consistent with the Commission's long history of working in concert with states and encouraging concurrent

Many Americans are affected by noncompetes and support banning them. After the Commission proposed to ban noncompetes, the Commission received more than 26,000 comments. Of those, approximately 25,000 favored a categorical ban.⁵ Many workers described how noncompetes blocked them from taking a better job, negotiating better pay, or starting a business. Many entrepreneurs and small businesses also described how noncompetes prevented them from starting a business or hiring qualified workers.⁶ Many of the comments were from workers, businesses, and others in Washington. 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.⁸ 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.⁹ Another analysis of the same data found that 53% of workers covered by noncompetes are hourly workers.¹⁰

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, noncompetes 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

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 will have access to better products and lower prices.¹⁸ For example, the Commission estimates that the rule 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 The Commission found that employers can use trade secret law and reasonable non-disclosure agreements to protect legitimate intellectual property interests.²¹ Roughly 95% of workers with noncompetes are already subject to non-

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important as a deterrent, as can parallel enforcement of state laws.²⁹

As the Commission explains in the final rule, the rule would not preempt state laws that restrict noncompetes and do not conflict with it, including both broader state prohibitions and state prohibitions that are narrower in scope.³⁰ That is, state laws cannot authorize noncompetes that are prohibited by the rule, but states may, for example, continue to pursue enforcement actions under their laws prohibiting noncompetes even if the state law prohibits a narrower subset of noncompetes than the FTC's rule.³¹

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