



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

Office of Policy Planning

January 15, 2025

VIA ELECTRONIC MAIL

The Honorable Justin Busch
Senator
Indiana Senate

Re: S.B. 475

Dear Senator Busch:

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

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 Indiana—including many health care practitioners. 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 are pervasive in health care. One study found that 45% of physicians worked under a noncompete.¹¹ A study of noncompetes in physician markets found that such clauses lead to greater concentration and higher prices for consumers.¹² The Commission specifically found that noncompetes increase healthcare costs,¹³ and that the rule would reduce health care costs by \$74-\$194 billion over the next decade in reduced spending on physician services.¹⁴

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.¹⁵

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.¹⁶ 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.¹⁷

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.³³ 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.³⁴

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 S.B. 475. 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

³³ *Id.* at 38452-54.

³⁴ *Id.* at 38453-55.