

HOUSE No. 1715

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich and 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 adoption of the accompanying bill:

An Act relative to non-competition agreements.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>

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By Representative Ehrlich of Marblehead and Senator Brownsberger, a joint petition (accompanied by bill, House, No. 1715) of Lori A. Ehrlich, William Brownsberger and others for legislation to limit the time that former employees must wait before being employed by a competitor. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to 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 SECTION 1. The general court finds and declares that:-

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

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

8 SECTION 2. Chapter 149 of the General Laws, as appearing in the 2006 Official Edition
9 is hereby amended by inserting after section 24K the following section:-

10 Section 24L. (a) An employee noncompetition agreement that restricts an employee’s
11 mobility for no longer than six months shall be presumed reasonable in duration.

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

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

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

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

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