

SENATE No. 846

The Commonwealth of Massachusetts

PRESENTED BY:

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 employee non-competition agreements.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|-------------------------------------|
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>Lori A. Ehrlich</i> | <i>8th Essex</i> |

SENATE No. 846

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 846) of William N. Brownsberger, Michael Barrett, Patricia D. Jehlen and Lori A. Ehrlich for legislation relative to employee non-competition agreements. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to employee 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 Whereas the Commonwealth of Massachusetts has a significant interest in its economic
2 competitiveness and the protection of its employers, and a strong public policy favoring the
3 mobility of its workforce; and

4 Whereas the Commonwealth of Massachusetts has determined that an employee
5 noncompetition agreement restricting an employee's mobility for longer than six months is a
6 restraint on trade and harms the economy;

7 Therefore, be it enacted by the Senate and House of Representatives in General Court
8 assembled, and by the authority of the same, as follows:

9 SECTION 1. The general court finds and declares that:-

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

13 (b) the Commonwealth of Massachusetts has determined that an employee
14 noncompetition agreement restricting an employee's mobility for longer than six months is a
15 restraint on trade and harms the economy.

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

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

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

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

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

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

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