

MASSACHUSETTS
HIGHTECHNOLOGYCOUNCIL

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TESTIMONY

Statement before the Joint Committee on Labor and Workforce Development

In Opposition to:

**HOUSE BILL 1701, AN ACT RELATIVE TO THE JUDICIAL
ENFORCEMENT OF NONCOMPETITION AGREEMENTS**

AND

**SENATE BILL 957, AN ACT RELATIVE TO THE JUDICIAL
ENFORCEMENT OF NONCOMPETITION AGREEMENTS**

June 23, 2015

**Mark J. Gallagher, Executive Vice President
Massachusetts High Technology Council**

Thank you, Chairman Wolf and Chairman Scibak and members of the Committee for the opportunity to speak today regarding proposed reforms to the Commonwealth's laws governing noncompetition agreements. My name is Mark Gallagher and I am Executive Vice President for Public Policy and Communications at the Massachusetts High Technology Council.

The Mass. High Tech Council is the Commonwealth's oldest and only cross-sector association of CEO-level leaders of technology-focused organizations. The Council has a 37-year history of non-partisan advocacy in support of one overarching mission: To make Massachusetts the world's most attractive place in which to live and work, and in which to create, operate, and grow high technology businesses.

Each of you is well aware that a great deal of attention has been paid to the issue of noncompetition agreements over the past several years. In our opinion, the level of attention is not necessarily commensurate with the importance of noncompetition agreements to the health and vitality of the local environment for technology companies. The ability to utilize and appropriately limit noncompetition agreements certainly matters to our members, but other policy initiatives that would foster start up formation and encourage research and development investments have the potential to be far more impactful. The High Tech Council recognizes, however, that the Commonwealth would benefit from a reconciliation of the ongoing debate regarding non-competes.

The Council opposes any statutory change that would ban noncompetition agreements or make them broadly unenforceable *per se*, including those embodied in House Bill 1701 and Senate Bill 957. The

ability to utilize noncompetition agreements within legal limits serves a legitimate and compelling interest of employers, large and small, across the Commonwealth and the tech sector.

Talent and innovative ideas are the fuel that powers technology companies. It is critical to continue to permit them to use well-established and predictable legal tools to protect those assets and investments, particularly from direct business competitors. A complete prohibition, even when coupled with added IP protections, would expose employers to significant commercial harm, cost and risk. Massachusetts would not benefit from becoming just the fourth state to prohibit noncompetition agreements.

The use and enforcement of noncompetition agreements in Massachusetts is already strictly limited and enforced. But the Council believes that additional, well-crafted limitations could improve the operating environment for many technology businesses and enhance Massachusetts' "brand" as a hub for innovative companies. However, appropriate and specific modifications have not yet been identified or fully vetted. We are committed to support and engage actively in efforts to identify and craft a set of detailed recommendations for a balanced solution.

Policymakers have been appropriately cautious about impacting tech-focused organizations' ability to manage talent and IP issues. We encourage the legislature to continue to carefully, but expeditiously, vet modification options through an active Commission on Noncompetition Agreements. We recommend a commission similar to what was included in economic development legislation enacted in 2014, but with an expanded membership from the technology community and a strict reporting deadline of December 31, 2015. Importantly, any additional limitations on noncompetition agreements should be coupled with the enactment of additional IP protections such as the Uniform Trade Secrets Act.

Again, thank you for the opportunity to share our concerns and for your consideration of this legislation. If you or your staff have any questions or concerns, please do not hesitate to contact me.