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# Patrick threatens enforcement ban on noncompetes

**Boston Business Journal by James M. Connolly**

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The all-or-nothing arguments of a few years ago may be moving into the realm of gray areas when it comes to noncompete agreements in Massachusetts.

At a State House hearing on Thursday, defenders of the state's current law allowing companies to enforce employee noncompete agreements and those who would ban noncompetes both had their say before the Joint Committee on Labor and Workforce Development.

But there also were calls for compromise, including one with a veiled threat from the Patrick Administration that if a middle ground isn't found that the state could consider "outright elimination of enforceability."

Opponents of noncompete agreements, including some in the venture capital community, say the current law hampers innovation and the launch of new companies. Two of three bills before the Labor and Workforce committee relating to noncompetes would effectively ban enforcement of noncompetes, and allow employees to leave one job to work with any other company. The third, sponsored by Rep. **Lori A. Ehrlich** (D-Marblehead) would limit but not ban enforcement.

Ehrlich said that her bill would establish "a safe harbor of reasonableness" in which employers could enforce a noncompete agreement.

Ehrlich noted that noncompetes aren't used just to restrict the movement of executives and engineers but people such as a hair dresser who told the committee that she was prevented from moving to a salon in the same geographic area as her previous employer. "We also heard from a father whose daughter had to leave the state in order to be gainfully employed. I think it is of utmost importance that we make our employment laws as fair as possible so employees are excited to work in the state and don't find themselves where they need to seek employment elsewhere," said Ehrlich.

Standing in opposition to elimination of noncompetes were groups including the Smaller Business Association of New England. "The major concern of a lot of these smaller companies is that they don't want to put their life savings on the line when they launch a company and then have their idea walk away to a competitor," said Woburn attorney **Andrew P. Botti**, chairman of SBANE.

Botti discounted arguments that abolishing noncompetes would put Massachusetts on a more even footing with states, including California, that don't enforce noncompetes. "Companies are leaving California in droves," said Botti. He noted that most cases where Massachusetts employers enforce noncompetes "get resolved by negotiation so people are not out of work." Botti added that there is a need for legislation to clarify some of the wording in the current noncompete law.

Larger companies also spoke out in opposition to attempts to end or significantly modify the law enabling noncompetes.

"As the Commonwealth continues to promote this state as a desirable headquarters for life sciences, manufacturing, technology and innovation industries, it would seem counter-intuitive to enact legislation that would effectively hamstring those same industries' ability to successfully protect their property rights and remain competitive," said **Anne Gaeta**, associate general counsel for **Fresenius Medical Care**, the Waltham-based operator of 1,800 dialysis clinics.

Meanwhile, the state's top economic development official joined in the call for a "middle ground."

**Gregory Bialecki**, secretary of the Executive Office of House and Economic Development, told the hearing, "There is now a growing body of study and analysis reaching the conclusion that the enforcement of noncompetition agreements can adversely affect an innovation economy."

He praised the efforts of Ehrlich and bill co-sponsor Rep. **William N. Brownsberger** (D-Belmont) to find that middle ground.

In his prepared remarks, Bialecki concluded, "There is in fact a pressing need for serious change. We urge all stakeholders to engage in a serious conversation about the shape and scope of that change. If the relevant stakeholders are not prepared to do so with a sense of urgency, then we ought to consider whether the outright elimination of enforceability altogether is the best course of action for the Massachusetts economy."