

Business

Senate approves limits on 'noncompete' clauses

By Jon Chesto

GLOBE STAFF

Leaders of the local venture capital community lobbied state lawmakers for years to restrict the contracts employers use to keep workers from jumping to competitors.

Now, with the formal legislative session nearing an end for the year, they're about to get their wish. And they're not happy.

The Senate on Wednesday night approved a broader bill that includes new limits on so-called noncompete agreements, with language deliberately written to get the

bill through the House of Representatives. Legislators had tried to strike a deal two years ago, but that effort failed after the local venture capital industry objected.

The version moving now would restrict the length of noncompetes to one year, and it includes a workaround that could allow companies to avoid significant payments to departed workers during that period.

Some members of the startup community say these conditions would do little to curb a practice they say stifles innovation by preventing workers from easily switching

But critics say the bill is watered down and doesn't go far enough

jobs or starting their own ventures.

"There's a real concern that people will feel like we've dealt with this issue, and we'll get stuck with really watered-down reform," said Allan Telio, a former director of the Startup Institute who now works at a local solar company.

The latest measure was attached to the Senate's version of an omnibus economic development bill. House and Senate leaders need to agree on the final legislation, so there is a chance the noncompete legislation could die before lawmakers wrap up on

July 31 for the year. The House version of the economic development bill did not include the language dealing with noncompetes.

The New England Venture Capital Association mounted an unsuccessful, last-minute lobbying blitz to amend the Senate bill, arguing that it doesn't "adequately protect knowledge workers," associate director Ari Glantz said. The group has long argued the use of noncompetes puts Massachusetts at a competitive disadvantage to California,

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'Noncompete' bill criticized as weak

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where they are basically illegal.

The current proposal would ban noncompetes for lower-wage hourly employees and student workers, and limit them to one year for other workers. Companies could no longer enforce them against people they have laid off.

The measure would also provide some compensation, known as garden leave, to departing workers — half their salary while a noncompete remains in effect. However, companies could get around this requirement by offering what the bill calls other “mutually agreed upon consideration.”

The venture capital group wants a six-month limit on noncompetes, and no alternative to the garden leave requirement.

Matt McLaughlin, a lawyer at the firm Nixon Peabody in Boston, said that alternative takes the teeth out of the garden leave requirement: Companies could simply offer a modest sum — say, \$500 — at the outset of someone's employment to qualify.

The previous effort for a compromise that would limit noncompetes failed in large part because of this concern.



SENATOR BROWNSBERGER'S TAKE:

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But one of the sponsors of the current version said the time has come to compromise.

"I'm aware some people want to do more, but this is big progress, and it's progress we should be pleased to make," said Senator Will Brownsberger, a Democrat from Belmont whose district includes parts of Boston.

Given that House Speaker Robert DeLeo endorsed the similar version two years ago, Brownsberger was optimistic that lawmakers in that chamber would support the latest legislation.

This time around, though, DeLeo has been circumspect. All that a spokeswoman would say is that the speaker's office will review the noncompete legislation.

Republican Governor Charlie Baker has not signaled his position on this bill. His predecessor, Deval Patrick, a Demo-

crat, wanted to ban noncompetes. A spokesman for Baker, who worked at the VC firm General Catalyst before becoming governor, said the administration will review the legislation to ensure it considers both workers' freedoms and protections for businesses.

Employment attorneys who deal with noncompetes in Massachusetts say most such agreements last between six months and two years, but they noted that judges can reduce their scope when disputes end up in court.

Susanne Hafer, of Sullivan & Worcester in Boston, said the limits under consideration represent a positive step forward and shouldn't be shunned by the VCs and startups.

"To wring your hands and say, 'This isn't as good as we wish it were,' doesn't get anybody anywhere," Hafer said. "You're in a much better place

than you were before."

But Andrew Botti, a litigator with McLane Middleton in Woburn, said he's skeptical noncompetes hurt the state's economy. And requiring companies to compensate departing employees after they leave, Botti said, could deter smaller businesses from adding staff.

"It's going to affect their ability to hire new people if they're forced to pay someone half their salary for a year," Botti said.

Employer groups such as the Greater Boston Chamber of Commerce and Associated Industries of Massachusetts endorsed the compromise — in part to help lower-wage workers, but also to preserve noncompetes in some form as a way to manage employee turnover.

"Massachusetts is often ranked number one, two, or three in any indicator around innovation," said James Rooney, chief executive of the Greater Boston Chamber of Commerce. "One would assume there would be a much bigger problem if [noncompetes were] a real problem."

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