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*House of Representatives*  
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## **Representative Smola supports bill to regulate employee non-compete agreements**

**BOSTON** –In an attempt to level the playing field for workers and employers, **State Representative Todd M. Smola (R-Warren)**, voted today to support legislation regulating the use of non-compete agreements.

House Bill 4434, *An Act relative to the judicial enforcement of noncompetition agreements*, was approved by the House on a vote of 150-0. The bill limits the duration of most non-compete agreements to one year, and prohibits the use of such agreements for student interns, college students, workers who are 18 or younger, and employees who are terminated without cause or laid off.

In addition to restricting non-compete agreements – which are typically used to prevent employees from leaving a company and starting their own competing business within the same geographic area – the bill establishes the Uniform Trade Secrets Act. This provision will enable companies to seek a court injunction to prevent the misappropriation of proprietary information and allow for the recovery of damages and attorney costs.

“This bill helps to clarify when and how non-compete agreements can be utilized and enforced,” said Representative Smola. “It also strikes a fair balance by allowing companies to protect sensitive information from falling into the hands of their competitors without unduly restricting an employee’s ability to continue to make a living in their field of expertise.”

To protect employees’ financial interests, House Bill 4434 requires non-compete agreements to include a “garden leave clause” or other specified mutual agreement. This

guarantees the employee will be paid half of their highest annualized salary for the preceding two years during the non-compete period.

While most non-competes would be limited to one year, the bill allows employers to impose a two-year restrictive period if the employee has breached a fiduciary duty or the employer can prove the employee has unlawfully taken property belonging to the employer, either physically or electronically. In such cases, the employer would not be obligated to provide a “garden leave” benefit during the extended restricted period.

House Bill 4434 requires businesses that use non-compete agreements to present the document to prospective employees either at the time a formal offer of employment is made, or 10 business days before they begin working, whichever is earlier. Prospective employees would also have the right to consult with an attorney before signing the document.

If a non-compete agreement is entered into after an employee has been hired, it must be “supported by fair and reasonable consideration independent from continued employment”. The bill also stipulates that non-compete agreements must be “reasonable in scope” and “no broader than necessary to protect certain legitimate business interests”. As currently written, House Bill 4434 would only apply to non-compete agreements signed on or after October 1, 2016. The Uniform Trade Secrets Act provisions would also take effect on the same day.

The bill now heads to the Senate for further action. For additional information please contact Representative Smola at [Todd.Smola@mahouse.gov](mailto:Todd.Smola@mahouse.gov) or (617)722-2100.

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