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TESTIMONY OF
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BEFORE THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
MARCH 8, 2007

I appreciate the opportunity to support House Bill 6989, An Act Concerning Noncompete Agreement, and LCO No. 5400 containing proposed substitute language for House Bill 6989.

As originally drafted, House Bill 6989 prohibited an employer from requiring employees to sign a non-compete agreement preventing employees from working in the same or similar job at the same location.

The legislation arose out of an agreement that Guardsmark forced its employees to sign as a condition of employment. That agreement prohibited Guardsmark security guards at ESPN from working for a successor security firm even though that firm was ready and willing to keep these individuals in their jobs. Nearly 40 security guards were thrown out of work.

LCO No. 5400 now provides substitute language for House Bill 6989 establishing a broad prohibition against non-compete clauses except where the employee has acquired trade secrets or extraordinary or specialized training from the employer. A general statutory ban on non-compete clauses is hardly novel. Six states have banned non-compete clauses in most employment contracts: California (1992), Alabama (1975), Colorado (2003), Montana (1995), North Dakota (2002) and Oklahoma (2001).

A broad ban on non-compete clauses is based on the principle that only very rarely does an employee obtain such unique knowledge from the employer to justify such significant limitations on subsequent work opportunities. Measures to protect employees in the specific industries or work settings where they are most vulnerable, including security guard service or broadcasting, simply as examples, would be a solid start. The LCO draft would help secure a basic right to employment by prohibiting unfair, unwarranted employer restrictions on where employees may work.

I strongly support this principle, and the broad ban, but I recognize that the legislature may wish to implement it in discrete steps. I would support a more limited approach if necessary to begin the broader process of protecting employees.

In many cases, non-compete clauses are used inappropriately to threaten or intimidate or use employees as pawns in a competitive struggle. Guardsmark's non-compete clause was not

based on any unique knowledge or proprietary information gained by such employees through their work, but rather a tactic by one security guard firm against others competing at the same site. Guardsmark used its loyal employees as pawns or hostages, denying them jobs though Guardsmark lost the contract with ESPN.

The new security company -- and ESPN, whose facilities it was hired to secure -- wanted the Guardsmark employees to continue. But Guardsmark staunchly refused to waive or modify the non-compete clause.

Non-compete clauses are particularly pernicious because they strike directly an employee's ability to work. I urge the committee to favorably consider the broad prohibition language contained in LCO No. 5400, but also consider narrower protections to protect employees most at risk of use or abuse of such non-compete clauses.

The committee should favorably consider the specific prohibition against non-compete clauses in the broadcasting industry. These prohibitions protecting the broadcast employees have been enacted in Arizona, Illinois, Maine, Massachusetts and the District of Columbia. The television, radio and cable television industry is dominated by large corporations that can exert significant pressure and influence on its employees. Section 2 of LCO No. 5400 prohibits these employers from restricting future employment in a specific geographic area which is a common limitation placed on such employees. This limitation is particularly egregious in the broadcasting industry where individual name recognition and popular credibility is significant. This public persona and reputation -- combined with local sources and knowledge of the state -- are extraordinarily valuable, but attributable mainly to the hard work and initiative of the employee, not the conglomerates that own the station.

Section 2 also prohibits the employer from requiring the employee to disclose the terms of offers of employment after the expiration of the term of employment. This type of contract provision is intended to discourage competing offers for employment, thereby restricting employees in finding another job.

I urge the committee to, at a minimum, adopt these narrower measures, and support the interests of all employees by approving the language contained in LCO No. 5400.