

April 12, 2017

Senate Judiciary Committee

## **SB 977**

Mr. Chair and Members of the Committee:

My name is Mike Bybee. I am a small business owner in SE Portland. I serve the SE Portland, Gresham, Troutdale, and Happy Valley communities in the insurance industry. My office has been serving these communities since 1970. I, myself, have been serving in the community for over 30 years.

**I urge you to vote NO on SB 977.** This is not a good bill. The pendulum swings too far in the direction of the ex-employee! All too often when the discussion of a non-compete comes up, the immediate vision one tends to create in their mind is that of a large employer oppressing the ex-employee. Under our current law, in this state, that vision is not even close to reality. We currently have a very reasonable and equitable law recognizing all perspectives within the business relationship. Terms such as “non-compete” get thrown around nonchalantly but don't appropriately describe the detail of our current law. Our current statutes do a really good job of redefining the term “non-compete” to “non-piracy”. From here on in I will use the term “non-piracy”, because that is the spirit of our current statute. It properly recognizes the value of the work product in acquiring and servicing a customer for all parties involved.

The “non-piracy” laws we currently have are **fantastic** for the public. They are the most equitable way to treat business relationships as they impact the public. Our current “non-piracy” laws correctly:

- Assist in retaining the business equity value in the employee's work product, which was created from the employer's mentoring and training investment.
- Facilitate the employee's ability to branch out on their own to create their own business with their unique skill sets developed and refined during the employer's training investment.
- Allow a customer of the employer to do business with that ex-employee, provided the customer seeks out the ex-employee versus the ex-employee soliciting the employer customer
- And **most importantly**, our current “non-piracy” laws bring sanity to the consumer in that the customer won't be harassed and confused by competing solicitation offers between the employer and ex-employee, not understanding why they are in the middle of this tug of war. Our current laws encourage a professional transition and discussion about who should represent the customer in the business relationship.

As mentioned earlier, there are always three perspectives to a non-piracy relationship: the ex-employee's perspective, the employer's perspective, and the customer's perspective. When creating laws around this relationship, I contend that equity between all three perspectives should be the goal. However, this bill will impact the customer the worst as they will be unnecessarily bombarded with competing solicitations.

**The customer perspective.** Regardless of industry, the customer wants comfort that their needs are being addressed appropriately and effectively. Although my reference is the insurance industry, this would apply with any customer and business professional relationship. Some customers have a very tight relationship with their business professional and want to maintain that relationship instead of retaining the relationship with the employer. Our current laws support this desire also, as long as the customer seeks out the ex-employee versus the ex-employee soliciting the customer to change. Our current laws, keep the customer in charge of their business decisions, allowing for a professional transition with minimal business disruption. This bill will encourage chaos in the marketplace.

**The ex-employee perspective.** Generally, this person has the dream to break out on their own to start their own business. Our current laws allow for this and encourage the ex-employee to **solicit anyone**, except customers that were solicited during their employment period. However, **once two years have elapsed**, that ex-employee can solicit anyone including their old customer relationships. So, *other than pirating customers from the old employer*, our current law allows the employee to compete and operate

their business in any fashion they desire from day one. Two years is a good time-frame as it recognizes the employer's investment training value and recognizes the customer's desire to maintain stable business relationships within their business operation. This bill will invite chaos, benefiting no party in the relationship.

**The employer perspective.** The goal and desire of every employer is to create equity in their business through employee work product. This is accomplished by providing their employees with unique skill sets through training investments. My observation is generally the payback on that training investment tends to be two years. Meaning, it is likely to take two years before the employer is receiving enough revenue to make a profit on that employee's work product after paying for the employee's hiring and training expenses. Our current law recognizes the value of that investment with a two-year prohibition on solicitation of existing customers. If the ex-employee has a desire to start their own business, this prohibition period encourages the ex-employee to have a professional discussion with the employer on how to transition their customer relationships from the employer to themselves. This bill shortens the prohibition period to 6 months, thus encouraging market chaos versus professional conversation.

This bill will drastically affect small business. In my 30 years, I have exercised my rights in a non-piracy agreement twice. In both cases, the employee resigned as they desired to start their own business. However, in both cases, they were not up front with their desire and intention. Upon resignation, they immediately started harassing the customer to change who should represent them as their insurance agent. I was able to utilize my rights within our non-piracy agreement to get the ex-employee to stop harassing the customer and sit down to discuss the available options in transitioning the customer to the ex-employee. In both cases, we were successful in our discussions, which resulted in a cordial and professional client transition to the ex-employee. If the non-solicitation window was only six months, I am positive this would not have been the outcome as the waiting window is too short to encourage conversation.

- The customer was thankful because the transition between business relationships was seamless to their business operation.
- The ex-employee was ultimately thankful, because they were able to have an instant revenue stream without competition and duress.
- The employer was thankful because the ex-employee compensated the employer for its employee investment value in acquiring the portfolio of customers.

This bill will effectively kill that professional transition opportunity between ex-employee and employer. A two-year solicitation prohibition is long enough to encourage the ex-employee to act professionally and enter into a customer transition discussion. However, a six-month prohibition will encourage the opposite behavior.

This bill will likely kill the motivation of many small employers to grow their small business *through employee salespeople* as the business risk will be much greater than the potential equity reward. Think about it! Two years represents a minimum \$50,000 and is likely closer to a \$70,000 or \$80,000 investment before that small employer can receive a return on their employee investment. Why would an employer choose to invest all that money in expanding with employee salespeople, if the law won't protect their investment from being stolen?

**Please vote no on SB 977.** We need to have laws that value all business party interests, not just one.

Mike Bybee  
Stamm Stuart Bybee Insurance  
16455 SE Division St.  
Portland, OR 97236  
(503) 760-1030