

# MedChi

The Maryland State Medical Society  
1211 Cathedral Street  
Baltimore, MD 21201-5516  
410.539.0872  
Fax: 410.547.0915  
1.800.492.1056  
www.medchi.org



**ACOG**  
The American College of  
Obstetricians and Gynecologists  
Maryland Section



TO: The Honorable Pamela Beidle, Chair  
Members, Senate Finance Committee  
The Honorable Terri A. Hill

FROM: J. Steven Wise  
Pamela Metz Kasemeyer  
Danna L. Kauffman  
Andrew G. Vetter  
Christine K. Krone  
410-244-7000

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RE: **SUPPORT** – House Bill 1388 – *Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals*

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On behalf of The Maryland State Medical Society, the Maryland Academy of Family Physicians, the Maryland Chapter of the American College of Emergency Physicians, the Maryland Section of The American College of Obstetricians and Gynecologists, the Maryland Chapter of the American Academy of Pediatrics, and the Maryland/District of Columbia Society of Clinical Oncology, we submit this letter of **support** for House Bill 1388.

House Bill 1388 would prohibit non-compete clauses in employment contracts affecting licensed health occupations, including physicians. A non-compete clause prevents an employee, upon termination of the agreement, from accepting employment in the same field within a certain geographic distance and for a set period of time. Such clauses have been upheld by Maryland courts, but for the reasons set forth below it is time for the General Assembly to intercede and prohibit their use.

This Committee is well aware of the shortage of physicians and other licensed health occupations in the State. Non-compete clauses contribute to the problem. Physicians who are bound by them are sometimes precluded from accepting employment, not only in the area surrounding their usual workplace, but also areas surrounding other health care facilities owned by the same employer in other parts of the State. Some physicians end up accepting employment in surrounding jurisdictions just to escape the geographic limitations of the non-compete, and this exacerbates the physician shortage.

This problem is only going to grow. The American Academy of Family Physicians estimates that 73% of all its members are employed, meaning these primary care physicians do not own their own practices and have signed employment agreements. Among younger family physicians, the percentage is around 90%, signaling that more and more physicians could be unreasonably restricted from remaining in Maryland due to non-compete

clauses. In 2011, only 59% of family physicians were employed. More broadly, the AMA Physician Practice Benchmark Survey revealed that across all specialties, most physicians are now employed.

When professional employees leave, perhaps the biggest concern of their employer is that they will take clients and other proprietary information with them. House Bill 1388 rightly prohibits this. The departing physician may not solicit clients to leave with them.

While one might view the signing of a non-compete clause as a matter between the employer and employee, in the case of health care workers, more than those two parties are affected. It impacts both current patients and potential patients who need access to a robust physician workforce. Non-compete clauses are at odds with this public policy goal, and the time has come for them to be prohibited in health care.