

CONSENT CALENDAR

March 1, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Labor, Industrial and Rehabilitative Services to which was referred HB 1363,

AN ACT relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers. Having considered the same, report the same with the following resolution:

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Brian Seaworth

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Labor, Industrial and Rehabilitative Services
Bill Number:	HB 1363
Title:	relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.
Date:	March 1, 2022
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This is the second of two bills before the committee this year to address a problem related to non-compete agreements. The committee has decided to use HB 1089 to address the subject matter, making this bill redundant.

Vote 20-0.

Rep. Brian Seaworth
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Labor, Industrial and Rehabilitative Services

HB 1363, relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers. **INEXPEDIENT TO LEGISLATE.**

Rep. Brian Seaworth for Labor, Industrial and Rehabilitative Services. This is the second of two bills before the committee this year to address a problem related to non-compete agreements.

The committee has decided to use HB 1089 to address the subject matter, making this bill redundant. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 1363

BILL TITLE: relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.

DATE: February 24, 2022

LOB ROOM: 305 - 307

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Seaworth

Seconded by Rep. Turcotte

Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jonathan Mackie, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 1363

BILL TITLE: relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.

DATE: 2/24/22

LOB ROOM: 305-307

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. Seaworth Seconded by Rep. Jurcotte Vote: 20-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: _____ Motion _____

Respectfully submitted: 
Rep Jonathan Mackie, Clerk



2022 SESSION

Labor, Industrial and Rehabilitative Services

Bill #: 1363 Motion: ITL AM #: _____ Exec Session Date: 2/24/2

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Infantine, William J. Chairman	20		
Seaworth, Brian Vice Chairman	1		
Avellani, Lino M.	2		
Callum, John M.	3		
Mackie, Jonathan D. Clerk	4		
Love, David C.			
Warden, Mark	5		
Turcotte, Leonard P.	6		
Prout, Andrew J.	7		
Boyd, Stephen E.	8		
Hough, Gregg	9		
Sullivan, Brian M.	10		
Soucy, Timothy A.	10		
Baroody, Benjamin C. <u>Schultz</u>	12		
Cahill, Michael D.	13		
DiSilvestro, Linda A. <u>Fellowg</u>	14		
Schmidt, Janice E.	15		
Toomey, Dan	16		
Bouchard, Donald J.	17		
Adjutant, Joshua	18		
Maneval, Andrew	19		

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 1363

BILL TITLE: relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.

DATE: January 13, 2022

LOB ROOM: 305 - 307 **Time Public Hearing Called to Order:** 1:00 p.m.

Time Adjourned: 1:06p.m.

Committee Members: Reps. Infantine, Mackie, Avellani, Callum, Warden, Turcotte, S. Boyd, Hough, Sullivan, Cahill, DiSilvestro, Toomey, Bouchard, Adjutant and Maneval

Bill Sponsors:
Rep. Roy

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Len Turcotte introduced the bill. As he was not the sponsor, he had no comment
Nobody signed up to speak and no committee members had anything to say about the bill.

(It was later learned that the sponsor was in the hospital. The hearing will be rescheduled)

Respectfully submitted,

Rep. Jonathan D. Mackie

Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 1363

BILL TITLE: relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.

DATE: February 10, 2022

LOB ROOM: 305 - 307 **Time Public Hearing Called to Order:** 9:34 a.m.

Time Adjourned: 9:55 a.m.

Committee Members: Reps. Infantine, Seaworth, Mackie, Avellani, Callum, Love, Warden, Turcotte, Prout, S. Boyd, Hough, Sullivan, Soucy, Baroody, Cahill, DiSilvestro, J. Schmidt, Toomey, Bouchard, Adjutant and Maneval

Bill Sponsors:
Rep. Roy

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

1/13: Rep. Len Turcotte introduced the bill. As he was not the sponsor, he had no comment
Nobody signed up to speak and no committee members had anything to say about the bill.

(It was later learned that the sponsor was in the hospital. The hearing will be rescheduled)

2/10: Rep. Terry Roy introduced the bill. This bill is necessary because employees who were terminated because of not wanting to take the vaccine are still being held to their non-compete agreements. An example is a sales person who was terminated for not taking the vaccine, but now cannot work because of a non-compete agreement preventing her from working for a year in the sales field. This bill would require the employer to buy out the employee.

Rep. Infantine: recent court rulings have made many non-competes illegal. Are you saying the employee could go after clients, use proprietary information, etc.?

Rep. Roy: No. It is just to allow them to work; that part of an agreement.

Rep. Infantine: Were these health care employees?

Rep. Roy: No.

Peter MacKenna of the DOL wanted to point out a few things. The bill doesn't seem to define when a job is in high demand. The law says the commissioner may suspend non-competes, but doesn't give clear guidance when.

Dave Juvet of the BIA testified against the bill. There are a number of companies that are under federal mandates for vaccines. This could create a conflict. This could upset previous agreements

Rep. Love Would you believe people have been fired over Facebook posts and political opinions?

Dave Juvet: I suppose I would.

Rep. Cahill: Isn't NH an at will state?

Dave Juvet: Yes, but there are some exemptions to that.

Rep. Seaworth: Is there a gap between what the court dictates and what DOL enforces

Dave Juvet: I have no kegal expertise, but my opinion would be that it might be a good idea to further study the issue of non-competes

Rep. Maneval: Does your group believe the right to negotiate non-competes is important?

Dave Juvet: Yes.

Respectfully submitted,

Rep. Jonathan Mackie

Clerk

House Remote Testify

Labor, Industrial and Rehabilitative Services Committee Testify List for Bill HB1363 on 2022-01-13

Support: 1 Oppose: 1 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Juvet, David	Concord, NH djuvet@biaofnh.com	A Lobbyist	Business & Industry Association of New Hampshire	Oppose	No	No	1/13/2022 8:10 AM
Laliberty, Rachel	Nashua, NH reireilaliberty@gmail.com	A Member of the Public	Myself	Support	No	No	1/13/2022 9:36 AM

House Remote Testify

Labor, Industrial and Rehabilitative Services Committee Testify List for Bill HB1363 on 2022-02-10

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Peacock, Courtney	Concord, NH sixpeacocks@gmail.com	A Member of the Public	Myself	Support	No	No	2/7/2022 8:42 AM
Richardson, Bryan	Alexandria, NH marks-dad@ipatriots.us	A Member of the Public	Myself	Support	No	No	2/8/2022 1:41 AM
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No	2/8/2022 2:00 PM
Cates, Tammy	Nashua, NH tjcates@eagleswind.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:28 AM
Cates, William	Nashua, NH wcatesjr@eagleswind.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:28 AM
Cates, Bethany	Nashua, NH brcates99@gmail.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:28 AM
Cates, Tyler	Nashua, NH xtylercatesx@gmail.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:29 AM
Cates, Sahriah	Nashua, NH sahriah@sahriah.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:29 AM
Stearn, Sylvia	Nashua, NH supermimi@eagleswind.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:29 AM
Stearn, Charity	Nashua, NH superauntie@eagleswind.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:29 AM
Robinson, Steven	Northwood, NH Nikkiandme@yahoo.com	A Member of the Public	Myself	Support	No	No	2/9/2022 7:13 PM
Robinson, Karen	Northwood, NH Bdabng12@yahoo.com	A Member of the Public	Myself	Support	No	No	2/9/2022 7:30 PM
Young, Susan	Alton Bay, NH snewco@hotmail.com	A Member of the Public	Myself	Support	No	No	2/9/2022 10:50 PM

Chester, Russan	Bedford, NH russan.chester@gmail.com	A Member of the Public	Myself	Support	No	No	2/9/2022 11:40 PM
Loveless, eric	bedford, NH lovelessej@gmail.com	A Member of the Public	Myself	Support	No	No	2/9/2022 11:40 PM

House Remote Testify

Labor, Industrial and Rehabilitative Services Committee Testify List for Bill HB1363 on 2022-01-13

Support: 1 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Juvet, David	Concord, NH djuvet@biaofnh.com	A Lobbyist	Business & Industry Association of New Hampshire	Oppose	No	No	1/13/2022 8:10 AM
Laliberty, Rachel	Nashua, NH reireilaliberty@gmail.com	A Member of the Public	Myself	Support	No	No	1/13/2022 9:36 AM

HB 1363 - AS INTRODUCED

2022 SESSION

22-2803

04/08

HOUSE BILL **1363**

AN ACT relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.

SPONSORS: Rep. Roy, Rock. 32

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill allows the commissioner of the department of labor to waive a noncompete agreement in times when the commissioner declares a critical shortage of a particular job or skill set.

.....

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the enforceability of noncompete agreements in areas in which there is determined to be a critical shortage of workers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Labor; Protective Legislation; Noncompete Agreements. Amend RSA 275:70 to read as
2 follows:

3 275:70 Noncompete Agreements.

4 I. Any employer who requires an employee who has not previously been employed by the
5 employer to execute a noncompete agreement as a condition of employment shall provide a copy of
6 such agreement to the potential employee prior to the employee's acceptance of an offer of
7 employment. A noncompete agreement that has not been disclosed to an employee as required by
8 this section shall not be enforceable against the employee, but all other provisions of any
9 employment, confidentiality, nondisclosure, trade secret, intellectual property assignment, or any
10 other type of employment agreement or provision shall remain in full force and effect.

11 ***II.(a) Upon a finding by the commissioner of labor that a particular job or skill set***
12 ***is in high demand and that the commissioner has declared that a critical shortage of***
13 ***available workers to fill such positions exists, the commissioner may suspend any***
14 ***noncompete agreement in effect during the period of the critical shortage. In this***
15 ***paragraph, "critical shortage" means an unemployment rate of less than 3 percent for a***
16 ***particular job or skill set, as determined by the United States Department of Labor, Bureau***
17 ***of Labor Statistics.***

18 ***(b) Any person who is unemployed at the time a critical shortage for a***
19 ***particular job or skill set is declared and is a party to noncompete agreement, may petition***
20 ***the commissioner in writing for a waiver of the noncompete agreement. If no waiver is***
21 ***sought or a party to an agreement is employed at the time a critical shortage is declared,***
22 ***the noncompete agreement shall remain in effect.***

23 ***(c) A person or entity aggrieved by a decision of the commissioner to suspend a***
24 ***noncompete agreement may appeal, as a matter of right, to the supreme court. The***
25 ***attorney general's office shall defend the commissioner in any such appeal. The***
26 ***unemployment rate, as determined by the United States Department of Labor, Bureau of***
27 ***Labor Statistics at the time of the commissioner's decision, shall control in any such***
28 ***appeal.***

1 ***(d) Any person who accepts employment subsequent to a decision by the***
2 ***commissioner shall be immune from liability in a civil action brought by a previous***
3 ***employer for a breach of contract pertaining to the noncompete agreement.***

4 2 Effective Date. This act shall take effect 60 days after its passage.