MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 2787**	DATE: **3/4/2024**
COMMITTEE: **Special Committee on Small Business**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

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I am in Support of this Bill on its face. It provides protections for the worker/employee from Restrictive Employment Agreements.

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WITNESS NAME

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March 4, 2024Special Committee on Small BusinessMissouri House of RepresentativesHouse Hearing Room 5201 W. Capitol Ave,Jefferson City, MO 65101 Dear Chair Brown, Vice Chair Busick, Ranking Member Proudie, and Members of the Missouri House of Representatives Special Committee on Small Business,Thank you for the opportunity to submit testimony in support of House Bill 2787, which adopts the Uniform Restrictive Employment Agreement Act. A copy of the Act and supporting materials can be found on the Uniform Law Commission's website www.uniformlaws.org.The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws), is a state supported organization that was established in 1892, and provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.ULC commissioners must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. ULC commissioners donate thousands of hours of legal work, without compensation, to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. The Uniform Law Commission adopted the Uniform Restrictive Employment Agreement Act at its 130th annual meeting in July 2021. The act is now ready for adoption by individual state legislatures and can become the centerpiece in a cooperative effort to promote efficiency, mobility, and fairness in labor markets.Uniform Restrictive Employment Agreement Act -- Core ElementsThe Uniform Restrictive Employment Agreement Act, which House Bill 2787 adopts, regulates employment agreements that prohibit or limit an employee or other worker from working elsewhere after the work relationship ends. Restrictive employment agreements like noncompetes often arise in several situations. Examples include officers and top managers, researchers and high-tech workers privy to trade secrets, or salespersons who develop customer relationships. Recently, noncompetes have increasingly been used to restrain lesser skilled, low-wage employees. Noncompetes and other restrictive employment agreements serve valid purposes in the right circumstances but are too often used in ways that limit worker mobility and hinder economic growth. Why should Missouri adopt this Uniform Act? The Uniform Restrictive Employment Agreement Act provides states with clear rules for determining when noncompete and other restrictive agreements will be unenforceable. In the past five years, many states have recognized the importance of using legislation to provide workers and employers with clarity for drafting and entering these agreements. This flurry of legislative activity inspired the ULC to act. After all, with workers moving across state lines at a growing frequency and an increasingly national labor market, employers and workers will greatly benefit from a uniform approach. Recently adopted state statutes increasingly create a patchwork of specific, often distinctive

reforms. And most states still rely on common law regulation that creates unpredictable outcomes.The Act recognizes that noncompetes and other restrictive agreements can serve valid purposes in enhancing value during the sale of a business, as well as in protecting trade secrets and customer relationships. However, these agreements can be abused, unduly limiting competition and worker mobility with few offsetting advantages. In striking the appropriate balance, the Uniform Act prohibits most restrictive agreements for low-wage workers, requires advance notice to other workers, sets maximum durations and other requirements for a valid restrictive employment agreement, and creates penalties for prohibited agreements.The scope of this Act is broad. The most stringent of the restrictive employment agreements is a noncompete, which expressly prohibit worker from creating, joining, or working for competing firms after termination of employment. The act does not regulate what a worker can or cannot do while working for the original employer. While noncompete agreements get the most attention, they are part of a family of restrictive agreements that also include nonsolicitation agreements, confidentiality agreements (also known as nondisclosure agreements), payment-for-competition agreements, and training-repayment agreements. All these agreements are covered by House Bill 2787. Other agreements with similar effect also fall within the scope of the Act.The Act prohibits restrictive agreements (except confidentiality agreements and training- reimbursement agreements) for low-wage workers, defined as those making less than the state's annual mean wage. Additionally, these agreements are unenforceable if the worker resigns for good cause attributable to the employer or the employer terminates the worker for a reason other than willful misconduct or the end of the project or term.In addition, the Uniform Restrictive Employment Agreement Act also requires advance notice and other procedural requirements for an enforceable restrictive agreement. An employer must give both general notice of the Act's requirements and specific notice of the particular restrictive agreement it is requesting of each employee. Notice enables workers to fully evaluate restrictive employment agreements and make a timely and informed decisions about whether to sign.House Bill 2787 sets maximum durations for restrictive agreements that range from six months to five years and establishes other substantive requirements for valid agreements. To protect the overall public interest in competition and mobility in labor markets, the Act's requirements are non-waivable except in narrowly defined circumstances.Finally, the Uniform Restrictive Employment Agreement Act allows a court to reform an overbroad agreement if the employer entered the agreement reasonably and in good faith thinking it was enforceable. It also creates penalties and enforcement by state departments of labor and private rights of action, to address the chilling effect of unenforceable agreements. House Bill 2787 limits an agreement's choice of law provisions venue to states where the worker primarily works or worked and choice of venue provisions to states where the worker primarily works, worked, or resides. This gives a worker a realistic opportunity to challenge a restrictive employment agreement.Value of a Uniform ActThe Uniform Restrictive Employment Agreement Act provides real value to legislatures and stakeholders. Business-community and employee-advocate groups are frustrated both with the lack of clarity within most states on when noncompetes are enforceable or unenforceable and with the diverse approaches among states. State-to-state and within-state variations make it difficult for national employers to adopt consistent policies for the various jurisdictions in which they do business and for workers to know their rights and obligations under a noncompete. The same is true of employees who need predictability in our increasingly mobile society. Unlike most employment-law topics, stakeholders do not divide cleanly on pro-employer/pro-employee lines. Employers want both to keep current workers from leaving and to hire experienced workers from other firms. Thank you for your time and consideration and I respectfully ask that the Committee favorably report House Bill 2787.Respectfully submitted,_____Kari BearmanLegislative CounselUniform Law Commission111 N. Wabash, Suite 1010Chicago, IL 60602kbearman@uniformlaws.org(312) 450 - 6617

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WITNESS NAME

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The Missouri Insurance Coalition opposes HB 2787 and its restrictions on the reasonable and current lawful use of non-compete and non-solicitation agreements.

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WITNESS NAME

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