

115TH CONGRESS
2D SESSION

S. _____

To prohibit covenants not to compete and require employers to notify employees of such prohibition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY (for himself, Ms. WARREN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To prohibit covenants not to compete and require employers to notify employees of such prohibition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workforce Mobility
5 Act of 2018”.

6 **SEC. 2. PROHIBITING COVENANTS NOT TO COMPETE.**

7 (a) IN GENERAL.—No employer shall enter into, en-
8 force, or threaten to enforce a covenant not to compete
9 with any employee of such employer, who in any workweek

1 is engaged in commerce or in the production of goods for
2 commerce (or is employed in an enterprise engaged in
3 commerce or in the production of goods for commerce).

4 (b) NOTICE.—An employer who employs any em-
5 ployee, who in any workweek is engaged in commerce or
6 in the production of goods for commerce (or is employed
7 in an enterprise engaged in commerce or in the production
8 of goods for commerce), shall post notice of the provisions
9 of this Act in a conspicuous place on the premises of such
10 employer.

11 **SEC. 3. DEPARTMENT OF LABOR ENFORCEMENT.**

12 (a) IN GENERAL.—The Secretary shall receive, inves-
13 tigate, attempt to resolve, and enforce a complaint of a
14 violation of section 2 in the same manner that the Sec-
15 retary receives, investigates, and attempts to resolve a
16 complaint of a violation of section 6 or 7 of the Fair Labor
17 Standards Act of 1938 (29 U.S.C. 206 and 207), subject
18 to subsection (b).

19 (b) CIVIL FINE.—The Secretary shall impose a civil
20 fine—

21 (1) with respect to any employer who violates
22 section 2(a), in an amount not to exceed \$5,000
23 for—

24 (A) each employee aggrieved by such viola-
25 tion; and

1 (B) for each week the employer is in viola-
2 tion of such section; and

3 (2) with respect to any employer who violates
4 section 2(b), in an amount not to exceed \$5,000 for
5 each week the employer is in violation of such sec-
6 tion.

7 **SEC. 4. PRIVATE RIGHT OF ACTION.**

8 (a) IN GENERAL.—An employee who is aggrieved by
9 a violation of section 2 may bring a civil action in an ap-
10 propriate district court of the United States.

11 (b) RELIEF.—In a civil action under subsection (a),
12 a court may award—

13 (1) any actual damages sustained by the em-
14 ployee as a result of the violation;

15 (2) such amount of punitive damages as the
16 court may allow; and

17 (3) for an employee that is a prevailing party,
18 the costs of the action and reasonable attorney's
19 fees, as determined by the court.

20 **SEC. 5. TRADE SECRETS.**

21 Nothing in this Act shall preclude an employer from
22 entering into an agreement with an employee to not share
23 any information (including after the employee is no longer
24 employed by the employer) regarding the employer or the

1 employment that is a trade secret, as defined in section
2 1839 of title 18, United States Code.

3 **SEC. 6. DEFINITIONS.**

4 For purposes of this Act:

5 (1) **COMMERCE.**—The term “commerce” has
6 the meaning given such term in section 3 of the Fair
7 Labor Standards Act of 1938 (29 U.S.C. 203).

8 (2) **COVENANT NOT TO COMPETE.**—The term
9 “covenant not to compete” means an agreement, en-
10 tered into after the date of enactment of this Act be-
11 tween an employer and an employee, that restricts
12 such employee from performing, after the employ-
13 ment relationship between the employer and the em-
14 ployee terminates, any of the following:

15 (A) Any work for another employer for a
16 specified period of time.

17 (B) Any work in a specified geographical
18 area.

19 (C) Any work for another employer that is
20 similar to such employee’s work for the em-
21 ployer that is a party to such agreement.

22 (3) **EMPLOYEE; EMPLOYER.**—The terms “em-
23 ployee” and “employer” have the meanings given
24 such terms in section 3 of the Fair Labor Standards
25 Act of 1938 (29 U.S.C. 203).

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of Labor.

3 (5) STATE.—The term “State” means any of
4 the several States or the District of Columbia.