

117TH CONGRESS
1ST SESSION

S. 483

To prohibit certain noncompete agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2021

Mr. MURPHY (for himself, Mr. YOUNG, Mr. KAINE, and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit certain noncompete agreements, 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 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The proliferation of noncompete agreements
9 throughout sectors, occupational categories, and in-
10 come brackets is contrary to Congress’ commitment

1 to fostering stronger wage growth for workers in the
2 United States. Economists now estimate that 1 in 5
3 workers is covered by a noncompete agreement.

4 (2) Noncompete agreements are blunt instru-
5 ments that crudely protect employer interests and
6 place a drag on national productivity by forcing cov-
7 ered workers to either idle for long periods of time
8 or leave the industries where they have honed their
9 skills altogether.

10 (3) Enforceable noncompete agreements also re-
11 duce wages, restrict worker mobility, impinge on
12 worker freedoms to maximize their labor market po-
13 tential, and slow the pace of American innovation.

14 (4) Employers have access to legal recourses to
15 protect their legitimate interests and property, in-
16 cluding trade secret protections, intellectual property
17 protections, and nondisclosure agreements that do
18 not inflict broad collateral harm on workers' labor
19 market prospects.

20 (5) Employers that rely on a list or lists of ven-
21 dors, customers, or clients that are not easily ob-
22 tained by an individual through means other than
23 the work relationship have adequate legal protection
24 through the use of trade secrets protections and
25 nondisclosure agreements.

1 (6) Noncompete agreements broadly restrict
 2 employment options for workers in the United States
 3 when more narrowly targeted remedies are readily
 4 available to employers.

5 (7) Fostering an environment where employers
 6 can flourish is necessary to promote vitality and
 7 prosperity in the economy.

8 (8) Employers may retain critical skilled em-
 9 ployees while ensuring that disincentives affecting
 10 mobility, including noncompete agreements, do not
 11 negatively impact the workforce in the United
 12 States.

13 **SEC. 3. PROHIBITING NONCOMPETE AGREEMENTS.**

14 (a) PROHIBITION.—

15 (1) IN GENERAL.—Except as provided in sub-
 16 section (b), no person shall enter into, enforce, or
 17 threaten to enforce a noncompete agreement with
 18 any individual who performs work for the person
 19 and who in any workweek is engaged in commerce
 20 or in the production of goods for commerce (or is
 21 employed in an enterprise engaged in commerce or
 22 in the production of goods for commerce).

23 (2) EFFECT OF AGREEMENTS.—Except as pro-
 24 vided in subsection (b), a noncompete agreement de-

1 scribed in paragraph (1) shall have no force or ef-
2 fect.

3 (b) EXCEPTIONS.—

4 (1) SALE OF GOODWILL OR OWNERSHIP INTER-
5 EST.—

6 (A) IN GENERAL.—Any person who sells
7 the goodwill of a business, any owner of a busi-
8 ness entity selling or otherwise disposing of all
9 of his or her ownership interest in the business
10 entity, or any owner of a business entity that
11 sells an asset or interest as described in sub-
12 paragraph (B), may enter into an agreement
13 with the buyer to refrain from carrying on a
14 like business within a specified geographic area
15 described in subparagraph (C), if the buyer, or
16 any person deriving title to the goodwill or own-
17 ership interest from the buyer, carries on a like
18 business in such specified geographic area.

19 (B) ASSET OR INTEREST.—An asset or in-
20 terest described in this subparagraph is—

21 (i) all or substantially all of the oper-
22 ating assets and the goodwill of the busi-
23 ness entity;

24 (ii) all or substantially all of the oper-
25 ating assets of a division, or a subsidiary,

1 of the business entity and the goodwill of
2 that division or subsidiary; or

3 (iii) all of the ownership interest of
4 any subsidiary of the business entity.

5 (C) SPECIFIED GEOGRAPHIC AREA.—A
6 specified geographic area described in this sub-
7 paragraph is a geographic area specified in the
8 agreement described in subparagraph (A), or
9 (D) as applicable, where the business, business
10 entity, division, or subsidiary sold as the subject
11 of such agreement, has conducted business
12 prior to the agreement.

13 (D) SENIOR EXECUTIVE OFFICIALS WITH
14 SEVERANCE AGREEMENTS.—

15 (i) IN GENERAL.—Any buyer or seller
16 described in subparagraph (A) may enter
17 into an agreement with a senior executive
18 official who has a severance agreement de-
19 scribed in clause (iii) for the senior execu-
20 tive official to refrain from carrying on a
21 like business within a specified geographic
22 area described in subparagraph (C), if the
23 buyer, or any person deriving title to the
24 goodwill or ownership interest from the

1 buyer, carries on a like business in such
2 specified geographic area.

3 (ii) TIME-LIMITED AGREEMENT.—An
4 agreement described in clause (i) may not
5 require the senior executive official to re-
6 frain from carrying on a like business as
7 described in such clause for a period that
8 is greater than one year.

9 (iii) SEVERANCE AGREEMENT.—A
10 severance agreement described in this
11 clause is an agreement between the buyer
12 and the senior executive official, or an
13 agreement between the seller and the sen-
14 ior executive official, described in clause (i)
15 that—

16 (I) is part of the terms and con-
17 ditions of the sale; and

18 (II) requires monetary compensa-
19 tion for the senior executive official in
20 the event of termination of the em-
21 ployment of the senior executive offi-
22 cial at an amount that is greater than
23 or equal to the compensation the offi-
24 cial is reasonably expected to receive

1 from the buyer during the 1-year pe-
2 riod following the sale.

3 (E) DEFINITIONS.—

4 (i) BUYER, SALE, SELLER.—For pur-
5 poses of this paragraph—

6 (I) the term “buyer” means, as
7 described in subparagraph (A), any
8 person who buys the goodwill of a
9 business, buys or otherwise acquires
10 ownership interest in a business enti-
11 ty, or buys an asset or interest as de-
12 scribed in subparagraph (B);

13 (II) the term “sale” means, as
14 described in subparagraph (A), the
15 sale of the goodwill of a business, the
16 sale or other disposal of all of the
17 ownership interest of the seller in a
18 business entity, or the sale of an asset
19 or interest as described in subpara-
20 graph (B); and

21 (III) the term “seller” means, as
22 described in subparagraph (A), any
23 person who sells the goodwill of a
24 business, any owner of a business en-
25 tity selling or otherwise disposing of

1 all of his or her ownership interest in
2 the business entity, or any owner of a
3 business entity that sells an asset or
4 interest as described in subparagraph
5 (B).

6 (ii) SENIOR EXECUTIVE OFFICIAL.—

7 For purposes of subparagraph (D), the
8 term “senior executive official” means an
9 official who was acquired as an employee
10 of the buyer through the terms and condi-
11 tions of the sale, and, on the day before
12 the date of such sale—

13 (I) who was employed by the sell-

14 er;

15 (II) who had an integral role in

16 the senior executive management team
17 of the seller;

18 (III) who was responsible for

19 making or directing major decisions of
20 the seller; and

21 (IV) whose rate of compensation

22 was in the highest 10 percent of the
23 compensation rates for all employees
24 of the seller.

1 (2) PARTNERSHIP DISSOLUTION OR DISASSO-
2 CIATION.—

3 (A) IN GENERAL.—Any partner may, upon
4 or in anticipation of any circumstance described
5 in subparagraph (B), enter into an agreement
6 with any other member of the partnership that
7 the partner will not carry on a like business
8 within a specified geographic area described in
9 subparagraph (C), if any other member of the
10 partnership, or any person deriving title to the
11 business or the goodwill of the business from
12 any other member of the partnership, carries on
13 a like business in such specified geographic
14 area.

15 (B) CIRCUMSTANCES.—A circumstance de-
16 scribed in this subparagraph is either of the fol-
17 lowing:

- 18 (i) A dissolution of the partnership.
- 19 (ii) Dissociation of the partner from
- 20 the partnership.

21 (C) SPECIFIED GEOGRAPHIC AREA.—A
22 specified geographic area described in this sub-
23 paragraph is a geographic area specified in the
24 agreement described in subparagraph (A) where

1 any business of the partnership has been trans-
2 acted prior to the agreement.

3 **SEC. 4. TRADE SECRETS.**

4 Nothing in this Act shall preclude a person from en-
5 tering into an agreement with an individual working for
6 the person to not share any information (including after
7 the individual is no longer working for the person) regard-
8 ing the person, or the work performed by the individual
9 for the person, that is a trade secret.

10 **SEC. 5. NOTICE; PUBLIC AWARENESS CAMPAIGN.**

11 (a) NOTICE.—Any person who engages an individual
12 who performs work for the person in commerce or in the
13 production of goods for commerce (or employs an indi-
14 vidual in an enterprise engaged in commerce or in the pro-
15 duction of goods for commerce) shall post notice of the
16 provisions of this Act in a conspicuous place on the prem-
17 ises of such person.

18 (b) PUBLIC AWARENESS CAMPAIGN.—The Secretary
19 of Labor may carry out activities to make the public aware
20 of the provisions of this Act.

21 **SEC. 6. ENFORCEMENT.**

22 (a) FEDERAL TRADE COMMISSION.—

23 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
24 TICES.—A violation of section 3 or 5(a) shall be
25 treated as a violation of a rule defining an unfair or

1 deceptive act or practice prescribed under section
2 18(a)(1)(B) of the Federal Trade Commission Act
3 (15 U.S.C. 57a(a)(1)(B)).

4 (2) POWERS OF COMMISSION.—

5 (A) IN GENERAL.—The Federal Trade
6 Commission shall enforce sections 3 and 5(a) in
7 the same manner, by the same means, and with
8 the same jurisdiction, powers, and duties as
9 though all applicable terms and provisions of
10 the Federal Trade Commission Act (15 U.S.C.
11 41 et seq.) were incorporated into and made a
12 part of this Act.

13 (B) PRIVILEGES AND IMMUNITIES.—Any
14 person who violates section 3 or 5(a) shall be
15 subject to the penalties and entitled to the
16 privileges and immunities provided in the Fed-
17 eral Trade Commission Act (15 U.S.C. 41 et
18 seq.).

19 (b) DEPARTMENT OF LABOR.—

20 (1) IN GENERAL.—The Secretary of Labor—

21 (A) shall receive and investigate a com-
22 plaint of a violation of section 3 or 5(a), if the
23 person in violation of such section is an em-
24 ployer of one or more employees; and

1 (B) may bring an action in any court of
2 competent jurisdiction to obtain the legal or eq-
3 uitable relief against the person described in
4 subparagraph (A) on behalf of an individual ag-
5 grieved by the violation as may be appropriate
6 to effectuate the purposes of such sections, sub-
7 ject to paragraph (2).

8 (2) CIVIL FINES.—In an action described in
9 paragraph (1)(B), the court of competent jurisdic-
10 tion described in such paragraph shall impose a civil
11 fine on any person described in paragraph (1)(A)
12 who violates section 3 or 5(a), in an amount not to
13 exceed \$5,000 for each week the person is in such
14 violation. Such fine shall be paid to the individual
15 aggrieved by such violation.

16 (3) REGULATIONS.—Not later than 180 days
17 after the date of enactment of this Act, the Sec-
18 retary of Labor shall issue regulations with respect
19 to the authority of the Secretary in enforcing viola-
20 tions of section 3 or 5(a) in accordance with this
21 subsection.

22 (c) STANDARDS FOR DUAL ENFORCEMENT.—Not
23 later than 90 days after the date of enactment of this Act,
24 the Federal Trade Commission and the Secretary of Labor
25 shall, for the purposes of enforcing this Act—

1 (1) develop shared standards for consistent en-
2 forcement; and

3 (2) identify the scope of responsibility of the
4 Federal Trade Commission and such scope of the
5 Secretary of Labor to ensure complementary en-
6 forcement of this Act.

7 (d) PRIVATE RIGHT OF ACTION.—

8 (1) IN GENERAL.—An individual who is ag-
9 grieved by a violation of this Act may bring a civil
10 action in any appropriate district court of the
11 United States.

12 (2) RELIEF.—In a civil action under paragraph
13 (1), a court may award—

14 (A) any actual damages sustained by the
15 individual as a result of the violation; and

16 (B) in the case of any successful action to
17 enforce any liability under this subsection, the
18 costs of the action and reasonable attorney's
19 fees, as determined by the court.

20 **SEC. 7. REPORTS.**

21 Not later than 1 year after the date on which the
22 Secretary of Labor issues the regulations under section
23 6(b)(3), the Federal Trade Commission and the Secretary
24 of Labor shall each submit to Congress a report on any

1 actions taken by the Commission or Secretary, respec-
 2 tively, to enforce the provisions of this Act.

3 **SEC. 8. DEFINITIONS.**

4 For purposes of this Act:

5 (1) BUSINESS ENTITY.—The term “business
 6 entity” means any partnership (including a limited
 7 partnership or a limited liability partnership), lim-
 8 ited liability company (including a series of a limited
 9 liability company formed under the laws of a juris-
 10 diction that recognizes such a series), or corporation.

11 (2) COMMERCE; ENTERPRISE ENGAGED IN COM-
 12 MERCE OR IN THE PRODUCTION OF GOODS FOR
 13 COMMERCE; PERSON; STATE.—The terms “com-
 14 merce”, “enterprise engaged in commerce or in the
 15 production of goods for commerce”, “person”, and
 16 “State” have the meanings given the terms in sec-
 17 tion 3 of the Fair Labor Standards Act of 1938 (29
 18 U.S.C. 203).

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

23 (4) NONCOMPETE AGREEMENT.—The term
 24 “noncompete agreement” means an agreement, en-
 25 tered into after the date of enactment of this Act be-

1 tween a person and an individual performing work
2 for the person, that restricts such individual from
3 performing, after the working relationship between
4 the person and individual terminates, any of the fol-
5 lowing:

6 (A) Any work for another person for a
7 specified period of time.

8 (B) Any work in a specified geographical
9 area.

10 (C) Any work for another person that is
11 similar to such individual's work for the person
12 that is a party to such agreement.

13 (5) OWNER OF A BUSINESS ENTITY.—The term
14 “owner of a business entity” means—

15 (A) in the case of a business entity that is
16 a partnership (including a limited partnership
17 or a limited liability partnership), any partner;

18 (B) in the case of a business entity that is
19 a limited liability company (including a series of
20 a limited liability company formed under the
21 laws of a jurisdiction that recognizes such a se-
22 ries), any member of such company; or

23 (C) in the case of a business entity that is
24 a corporation, any owner of capital stock.

1 (6) OWNERSHIP INTEREST.—The term “owner-
2 ship interest” means—

3 (A) in the case of a business entity that is
4 a partnership (including a limited partnership
5 or a limited liability partnership), a partnership
6 interest;

7 (B) in the case of a business entity that is
8 a limited liability company (including a series of
9 a limited liability company formed under the
10 laws of a jurisdiction that recognizes such a se-
11 ries), a membership interest; or

12 (C) in the case of a business entity that is
13 a corporation, a capital stockholder.

14 (7) TRADE SECRET.—The term “trade secret”
15 has the meaning given the term in section 1839 of
16 title 18, United States Code.

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