

114TH CONGRESS
1ST SESSION

S. 1504

To prohibit employers from requiring low-wage employees to enter into covenants not to compete, to require employers to notify potential employees of any requirement to enter into a covenant not to compete, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2015

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

A BILL

To prohibit employers from requiring low-wage employees to enter into covenants not to compete, to require employers to notify potential employees of any requirement to enter into a covenant not to compete, 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 “Mobility and Oppor-
5 tunity for Vulnerable Employees Act” or the “MOVE
6 Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

6 (2) **COVENANT NOT TO COMPETE.**—The term
7 “covenant not to compete” means an agreement—

8 (A) between an employee and employer
9 that restricts such employee from performing—

10 (i) any work for another employer for
11 a specified period of time;

12 (ii) any work in a specified geo-
13 graphical area; or

14 (iii) work for another employer that is
15 similar to such employee’s work for the
16 employer included as a party to the agree-
17 ment; and

18 (B) that is entered into after the date of
19 enactment of this Act.

20 (3) **EMPLOYEE; EMPLOYER; ENTERPRISE; EN-**
21 **TERPRISE ENGAGED IN COMMERCE OR IN THE PRO-**
22 **DUCTION OF GOODS FOR COMMERCE; GOODS.**—The
23 terms “employee”, “employer”, “enterprise”, “enter-
24 prise engaged in commerce or in the production of
25 goods for commerce”, and “goods” have the mean-

1 ings given such terms in section 3 of the Fair Labor
2 Standards Act of 1938 (29 U.S.C. 203).

3 (4) LIVABLE HOURLY RATE.—The term “livable
4 hourly rate” means—

5 (A) for the fiscal year of the date of enact-
6 ment of this Act, the greater of—

7 (i) \$15 per hour; or

8 (ii) the hourly rate equal to the min-
9 imum wage required by the applicable
10 State or local minimum wage law; and

11 (B) for each succeeding fiscal year, the
12 greater of—

13 (i) the adjusted amount described in
14 section 3(e); or

15 (ii) the hourly rate equal to the min-
16 imum wage required by the applicable
17 State or local minimum wage law.

18 (5) LOW-WAGE EMPLOYEE.—The term “low-
19 wage employee”—

20 (A) means an employee who, excluding any
21 overtime compensation required under section 7
22 of the Fair Labor Standards Act of 1938 (29
23 U.S.C. 207) or under an applicable State law,
24 receives from the applicable employer—

1 (i) an hourly compensation that is less
2 than the livable hourly rate; or

3 (ii) an annual compensation that is
4 equal to or less than—

5 (I) for the fiscal year of the date
6 of enactment of this Act, \$31,200 per
7 year; and

8 (II) for each succeeding fiscal
9 year, the adjusted amount described
10 in section 3(c); and

11 (B) does not include any salaried employee
12 who receives from the applicable employer com-
13 pensation that, for 2 consecutive months, is
14 greater than—

15 (i) for the fiscal year of the date of
16 enactment of this Act, \$5,000; and

17 (ii) for each succeeding fiscal year, the
18 adjusted amount described in such section.

19 (6) SECRETARY.—The term “Secretary” means
20 the Secretary of Labor.

21 (7) STATE.—The term “State” has the mean-
22 ing given such term in section 3 of the Fair Labor
23 Standards Act of 1938 (29 U.S.C. 203).

1 **SEC. 3. PROHIBITING COVENANTS NOT TO COMPETE FOR**
2 **LOW-WAGE EMPLOYEES.**

3 (a) IN GENERAL.—No employer shall enter into a
4 covenant not to compete with any low-wage employee of
5 such employer, who in any workweek is engaged in com-
6 merce or in the production of goods for commerce (or is
7 employed in an enterprise engaged in commerce or in the
8 production of goods for commerce).

9 (b) NOTICE.—An employer who employs any low-
10 wage employee, who in any workweek is engaged in com-
11 merce or in the production of goods for commerce (or is
12 employed in an enterprise engaged in commerce or in the
13 production of goods for commerce), shall post notice of
14 the provisions of this Act in a conspicuous place on the
15 premises of such employer.

16 (c) INFLATION ADJUSTMENT.—

17 (1) IN GENERAL.—For each fiscal year after
18 the fiscal year of the date of enactment of this Act,
19 the Secretary shall adjust each amount in effect
20 under section 2(4)(B)(i), section 2(5)(A)(ii)(II), or
21 section 2(5)(B)(ii) for inflation by increasing each
22 such amount, as in effect for the preceding fiscal
23 year, by the annual percentage increase in the Con-
24 sumer Price Index for Urban Wage Earners and
25 Clerical Workers (United States city average, all
26 items, not seasonally adjusted), or its successor pub-

1 lication, as determined by the Bureau of Labor Sta-
2 tistics.

3 (2) ROUNDING AMOUNTS.—The amounts ad-
4 justed under paragraph (1) shall be rounded to the
5 nearest multiple of \$0.05.

6 **SEC. 4. DISCLOSURE REQUIREMENT FOR COVENANTS NOT**
7 **TO COMPETE.**

8 In order for an employer to require an employee, who
9 in any workweek is engaged in commerce or in the produc-
10 tion of goods for commerce (or is employed in an enter-
11 prise engaged in commerce or in the production of goods
12 for commerce) and is not a low-wage employee, to enter
13 into a covenant not to compete, the employer shall, prior
14 to the employment of such employee and at the beginning
15 of the process for hiring such employee, have disclosed to
16 such employee the requirement for entering into such cov-
17 enant.

18 **SEC. 5. ENFORCEMENT.**

19 (a) IN GENERAL.—The Secretary shall receive, inves-
20 tigate, attempt to resolve, and enforce a complaint of a
21 violation of section 3 or 4 in the same manner that the
22 Secretary receives, investigates, and attempts to resolve
23 a complaint of a violation of section 6 or 7 of the Fair
24 Labor Standards Act of 1938 (29 U.S.C. 206 and 207),
25 subject to subsection (b).

1 (b) CIVIL FINE.—

2 (1) MAXIMUM FINE.—The Secretary shall im-
3 pose a civil fine—

4 (A) with respect to any employer who vio-
5 lates section 3(a) or 4, an amount not to exceed
6 \$5,000 for each employee who was the subject
7 of such violation; and

8 (B) with respect to any employer who vio-
9 lates section 3(b), an amount not to exceed
10 \$5,000.

11 (2) CONSIDERATION.—In determining the
12 amount of any civil fine under this subsection, the
13 Secretary shall consider the appropriateness of the
14 fine to the size of the employer subject to such fine
15 and the gravity of the applicable violation.

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