

114TH CONGRESS  
1ST SESSION

# H. R. 4254

To prohibit employers from requiring grocery store employees to enter into covenants not to compete, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2015

Mr. KILMER introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To prohibit employers from requiring grocery store employees to enter into covenants 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 “Freedom for Workers  
5 to Seek Opportunity Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

3                   (A) between an employee and employer  
4           that restricts such employee from performing—

5                           (i) any work for another employer for  
6                           a specified period of time;

7                           (ii) any work in a specified geo-  
8                           graphical area; or

9                           (iii) work for another employer that is  
10                           similar to such employee’s work for the  
11                           employer included as a party to the agree-  
12                           ment; and

13                   (B) that is entered into after the date of  
14           enactment of this Act.

15           (3) EMPLOYEE; EMPLOYER; ENTERPRISE; EN-  
16           TERPRISE ENGAGED IN COMMERCE OR IN THE PRO-  
17           DUCTION OF GOODS FOR COMMERCE; GOODS.—The  
18           terms “employee”, “employer”, “enterprise”, “enter-  
19           prise engaged in commerce or in the production of  
20           goods for commerce”, and “goods” have the mean-  
21           ings given such terms in section 3 of the Fair Labor  
22           Standards Act of 1938 (29 U.S.C. 203).

23           (4) GROCERY STORE.—The term “grocery  
24           store” means an establishment that sells food for  
25           home preparation and consumption and offers for

1 sale, on a continuous basis, a variety of foods in  
2 each of the following categories of staple foods, in-  
3 cluding perishable foods in at least two of the cat-  
4 egories:

5 (A) Meat, poultry, or fish.

6 (B) Breads and cereals.

7 (C) Vegetables and fruits.

8 (D) Dairy products.

9 (5) GROCERY STORE EMPLOYEE.—The term  
10 “grocery store employee” means an employee who is  
11 employed by a grocery store.

12 (6) SECRETARY.—The term “Secretary” means  
13 the Secretary of Labor.

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

17 **SEC. 3. PROHIBITION ON COVENANTS NOT TO COMPETE**  
18 **AND OTHER AGREEMENTS RESTRICTING THE**  
19 **MOBILITY OF GROCERY STORE EMPLOYEES.**

20 (a) COVENANT NOT TO COMPETE.—

21 (1) IN GENERAL.—No employer shall enter into  
22 a covenant not to compete with any grocery store  
23 employee of such employer, who in any workweek is  
24 engaged in commerce or in the production of goods  
25 for commerce (or is employed in an enterprise en-

1 gaged in commerce or in the production of goods for  
2 commerce).

3 (2) NOTICE.—An employer subject to sub-  
4 section (a) shall post, in a conspicuous place on the  
5 premises of such employer, a notice of the prohibi-  
6 tion set forth in such subsection.

7 (b) PURCHASE AGREEMENTS.—No employer who  
8 owns or operates at least one grocery store may, in con-  
9 junction with the purchase of one or more grocery stores  
10 owned or operated by another employer, include in any  
11 agreement between such employers any provision that re-  
12 stricts either employer from hiring a grocery store em-  
13 ployee of the other employer.

14 **SEC. 4. GROCERY STORE EMPLOYEE RETENTION OF SE-**  
15 **NIORITY AND BENEFITS AFTER ACQUISITION**  
16 **OR MERGER.**

17 An employer who acquires the operations of another  
18 employer (hereafter referred to as the former employer)  
19 and retains in employment a grocery store employee of the  
20 former employer at the same grocery store of the former  
21 employer shall continue to recognize, for all employment  
22 purposes, the seniority of such grocery store employee,  
23 and, to the extent practicable, make available to such em-  
24 ployees any benefits made available by the former em-  
25 ployer.

1 **SEC. 5. ENFORCEMENT.**

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

9 (b) CIVIL FINE.—

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

12 (A) with respect to any employer who vio-  
13 lates section 3(a) or 4, an amount not to exceed  
14 \$5,000 for each employee who was the subject  
15 of such violation; and

16 (B) with respect to any employer who vio-  
17 lates section 3(b), an amount not to exceed  
18 \$5,000.

19 (2) CONSIDERATION.—In determining the  
20 amount of any civil fine under this subsection, the  
21 Secretary shall consider the appropriateness of the  
22 fine to the size of the employer subject to such fine  
23 and the gravity of the applicable violation.

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