H. R. 4254

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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Freedom for Workers to Seek Opportunity Act”.

SECTION 2. DEFINITIONS.

In this Act:

(1) Commerce.—The term “commerce” has the meaning given such term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).
(2) COVENANT NOT TO COMPETE.—The term “covenant not to compete” means an agreement—

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

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

(ii) any work in a specified geographical area; or

(iii) work for another employer that is similar to such employee’s work for the employer included as a party to the agreement; and

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

(3) EMPLOYEE; EMPLOYER; ENTERPRISE; ENTERPRISE ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE; GOODS.—The terms “employee”, “employer”, “enterprise”, “enterprise engaged in commerce or in the production of goods for commerce”, and “goods” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) GROCERY STORE.—The term “grocery store” means an establishment that sells food for home preparation and consumption and offers for
sale, on a continuous basis, a variety of foods in each of the following categories of staple foods, including perishable foods in at least two of the categories:

(A) Meat, poultry, or fish.
(B) Breads and cereals.
(C) Vegetables and fruits.
(D) Dairy products.

(5) Grocery store employee.—The term “grocery store employee” means an employee who is employed by a grocery store.

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

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

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

(a) Covenant Not To Compete.—

(1) In General.—No employer shall enter into a covenant not to compete with any grocery store employee of such employer, who in any workweek is engaged in commerce or in the production of goods for commerce (or is employed in an enterprise en-
gaged in commerce or in the production of goods for commerce).

(2) **Notice.**—An employer subject to subsection (a) shall post, in a conspicuous place on the premises of such employer, a notice of the prohibition set forth in such subsection.

(b) **Purchase Agreements.**—No employer who owns or operates at least one grocery store may, in conjunction with the purchase of one or more grocery stores owned or operated by another employer, include in any agreement between such employers any provision that restricts either employer from hiring a grocery store employee of the other employer.

**SEC. 4. GROCERY STORE EMPLOYEE RETENTION OF SENIORITY AND BENEFITS AFTER ACQUISITION OR MERGER.**

An employer who acquires the operations of another employer (hereafter referred to as the former employer) and retains in employment a grocery store employee of the former employer at the same grocery store of the former employer shall continue to recognize, for all employment purposes, the seniority of such grocery store employee, and, to the extent practicable, make available to such employees any benefits made available by the former employer.
SEC. 5. ENFORCEMENT.

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

(b) CIVIL FINE.—

(1) MAXIMUM FINE.—The Secretary shall impose a civil fine—

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

(B) with respect to any employer who violates section 3(b), an amount not to exceed $5,000.

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