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

APRIL 26, 2018

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

A BILL

To prohibit covenants not to compete and require employers to notify employees of such prohibition, 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 “Workforce Mobility Act of 2018”.

SEC. 2. PROHIBITING COVENANTS NOT TO COMPETE.

(a) IN GENERAL.—No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any 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 engaged in commerce or in the production of goods for commerce).

(b) NOTICE.—An employer who employs any employee, who in any workweek is engaged in commerce or in the production of goods for commerce (or is employed in an enterprise engaged in commerce or in the production of goods for commerce), shall post notice of the provisions of this Act in a conspicuous place on the premises of such employer.

SEC. 3. DEPARTMENT OF LABOR ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall receive, investigate, attempt to resolve, and enforce a complaint of a violation of section 2 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.—The Secretary shall impose a civil fine—

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

(A) each employee aggrieved by such violation; and
(B) for each week the employer is in violation of such section; and

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

SEC. 4. PRIVATE RIGHT OF ACTION.

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

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

(1) any actual damages sustained by the employee as a result of the violation;

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

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

SEC. 5. TRADE SECRETS.

Nothing in this Act shall preclude an employer from entering into an agreement with an employee to not share any information (including after the employee is no longer employed by the employer) regarding the employer or the
employment that is a trade secret, as defined in section 1839 of title 18, United States Code.

SEC. 6. DEFINITIONS.

For purposes of 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, entered into after the date of enactment of this Act between an employer and an employee, that restricts such employee from performing, after the employment relationship between the employer and the employee terminates, any of the following:

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

(B) Any work in a specified geographical area.

(C) Any work for another employer that is similar to such employee’s work for the employer that is a party to such agreement.

(3) EMPLOYEE; EMPLOYER.—The terms “employee” and “employer” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).
(4) Secretary.—The term “Secretary” means the Secretary of Labor.

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