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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Workforce Mobility
Act of 2021”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The proliferation of noncompete agreements throughout sectors, occupational categories, and income brackets is contrary to Congress’ commitment
to fostering stronger wage growth for workers in the United States. Economists now estimate that 1 in 5 workers is covered by a noncompete agreement.

(2) Noncompete agreements are blunt instruments that crudely protect employer interests and place a drag on national productivity by forcing covered workers to either idle for long periods of time or leave the industries where they have honed their skills altogether.

(3) Enforceable noncompete agreements also reduce wages, restrict worker mobility, impinge on worker freedoms to maximize their labor market potential, and slow the pace of American innovation.

(4) Employers have access to legal recourses to protect their legitimate interests and property, including trade secret protections, intellectual property protections, and nondisclosure agreements that do not inflict broad collateral harm on workers’ labor market prospects.

(5) Employers that rely on a list or lists of vendors, customers, or clients that are not easily obtained by an individual through means other than the work relationship have adequate legal protection through the use of trade secrets protections and nondisclosure agreements.
(6) Noncompete agreements broadly restrict employment options for workers in the United States when more narrowly targeted remedies are readily available to employers.

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

(8) Employers may retain critical skilled employees while ensuring that disincentives affecting mobility, including noncompete agreements, do not negatively impact the workforce in the United States.

SEC. 3. PROHIBITING NONCOMPETE AGREEMENTS.

(a) Prohibition.—

(1) In general.—Except as provided in subsection (b), no person shall enter into, enforce, or threaten to enforce a noncompete agreement with any individual who performs work for the person and 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).

(2) Effect of agreements.—Except as provided in subsection (b), a noncompete agreement de-
scribed in paragraph (1) shall have no force or effect.

(b) EXCEPTIONS.—

(1) SALE OF GOODWILL OR OWNERSHIP INTEREST.—

(A) IN GENERAL.—Any person who sells the goodwill of a business, any owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity, or any owner of a business entity that sells an asset or interest as described in subparagraph (B), may enter into an agreement with the buyer to refrain from carrying on a like business within a specified geographic area described in subparagraph (C), if the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business in such specified geographic area.

(B) ASSET OR INTEREST.—An asset or interest described in this subparagraph is—

(i) all or substantially all of the operating assets and the goodwill of the business entity;

(ii) all or substantially all of the operating assets of a division, or a subsidiary,
of the business entity and the goodwill of
that division or subsidiary; or

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

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

(D) SENIOR EXECUTIVE OFFICIALS WITH
SEVERANCE AGREEMENTS.—

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

(ii) Time-limited Agreement.—An
agreement described in clause (i) may not
require the senior executive official to re-
frain from carrying on a like business as
described in such clause for a period that
is greater than one year.

(iii) Severance Agreement.—A
severance agreement described in this
clause is an agreement between the buyer
and the senior executive official, or an
agreement between the seller and the sen-
ior executive official, described in clause (i)
that—

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

(II) requires monetary compensa-
tion for the senior executive official in
the event of termination of the em-
ployment of the senior executive offi-
cial at an amount that is greater than
or equal to the compensation the offi-
cial is reasonably expected to receive
from the buyer during the 1-year pe-
period following the sale.

(E) DEFINITIONS.—

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

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

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

(III) the term “seller” means, as
described in subparagraph (A), any
person who sells the goodwill of a
business, any owner of a business en-
tity selling or otherwise disposing of
all of his or her ownership interest in
the business entity, or any owner of a
business entity that sells an asset or
interest as described in subparagraph
(B).

(ii) SENIOR EXECUTIVE OFFICIAL.—
For purposes of subparagraph (D), the
term “senior executive official” means an
official who was acquired as an employee
of the buyer through the terms and condi-
tions of the sale, and, on the day before
the date of such sale—

(I) who was employed by the sell-
er;

(II) who had an integral role in
the senior executive management team
of the seller;

(III) who was responsible for
making or directing major decisions of
the seller; and

(IV) whose rate of compensation
was in the highest 10 percent of the
compensation rates for all employees
of the seller.
(2) PARTNERSHIP DISSOLUTION OR DISASSOCIATION.—

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

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

(i) A dissolution of the partnership.

(ii) Dissociation of the partner from
the partnership.

(C) SPECIFIED GEOGRAPHIC AREA.—A
specified geographic area described in this sub-
paragraph is a geographic area specified in the
agreement described in subparagraph (A) where
any business of the partnership has been trans-
acted prior to the agreement.

SEC. 4. TRADE SECRETS.

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

SEC. 5. NOTICE; PUBLIC AWARENESS CAMPAIGN.

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

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

SEC. 6. ENFORCEMENT.

(a) FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of section 3 or 5(a) shall be
treated as a violation of a rule defining an unfair or

(2) Powers of Commission.—

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

(B) Privileges and Immunities.—Any person who violates section 3 or 5(a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Department of Labor.—

(1) In general.—The Secretary of Labor—

(A) shall receive and investigate a complaint of a violation of section 3 or 5(a), if the person in violation of such section is an employer of one or more employees; and
(B) may bring an action in any court of competent jurisdiction to obtain the legal or equitable relief against the person described in subparagraph (A) on behalf of an individual aggrieved by the violation as may be appropriate to effectuate the purposes of such sections, subject to paragraph (2).

(2) Civil fines.—In an action described in paragraph (1)(B), the court of competent jurisdiction described in such paragraph shall impose a civil fine on any person described in paragraph (1)(A) who violates section 3 or 5(a), in an amount not to exceed $5,000 for each week the person is in such violation. Such fine shall be paid to the individual aggrieved by such violation.

(3) Regulations.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor shall issue regulations with respect to the authority of the Secretary in enforcing violations of section 3 or 5(a) in accordance with this subsection.

(c) Standards for Dual Enforcement.—Not later than 90 days after the date of enactment of this Act, the Federal Trade Commission and the Secretary of Labor shall, for the purposes of enforcing this Act—
(1) develop shared standards for consistent enforcement; and

(2) identify the scope of responsibility of the Federal Trade Commission and such scope of the Secretary of Labor to ensure complementary enforcement of this Act.

(d) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—An individual who is aggrieved by a violation of this Act may bring a civil action in any appropriate district court of the United States.

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

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

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

SEC. 7. REPORTS.

Not later than 1 year after the date on which the Secretary of Labor issues the regulations under section 6(b)(3), the Federal Trade Commission and the Secretary of Labor shall each submit to Congress a report on any
actions taken by the Commission or Secretary, respectively, to enforce the provisions of this Act.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) **BUSINESS ENTITY.**—The term “business entity” means any partnership (including a limited partnership or a limited liability partnership), limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or corporation.

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

(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) **NONCOMPETE AGREEMENT.**—The term “noncompete agreement” means an agreement, entered into after the date of enactment of this Act be-
between a person and an individual performing work for the person, that restricts such individual from performing, after the working relationship between the person and individual terminates, any of the following:

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

(B) Any work in a specified geographical area.

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

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

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

(B) in the case of a business entity that is a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), any member of such company; or

(C) in the case of a business entity that is a corporation, any owner of capital stock.
(6) Ownership interest.—The term “ownership interest” means—

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

(B) in the case of a business entity that is a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), a membership interest; or

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

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