

118TH CONGRESS
1ST SESSION

S. _____

To prohibit certain noncompete agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To prohibit certain noncompete agreements, 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 “Workforce Mobility
5 Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The proliferation of noncompete agreements
9 throughout sectors, occupational categories, and in-
10 come brackets is contrary to the commitment of
11 Congress to foster stronger wage growth for workers

1 in the United States. Economists now estimate that
2 1 in 5 workers is covered by a noncompete agree-
3 ment.

4 (2) Noncompete agreements are blunt instru-
5 ments that crudely protect employer interests and
6 place a drag on national productivity by forcing cov-
7 ered workers to either idle for long periods of time
8 or leave the industries in which the workers have
9 honed their skills altogether.

10 (3) Enforceable noncompete agreements also re-
11 duce wages, restrict worker mobility, impinge on the
12 freedom of a worker to maximize labor market po-
13 tential, and slow the pace of innovation in the
14 United States.

15 (4) Employers have access to legal recourses to
16 protect their legitimate interests and property, in-
17 cluding trade secret protections, intellectual property
18 protections, and nondisclosure agreements that do
19 not inflict broad collateral harm on the labor market
20 prospects for workers.

21 (5) Employers that rely on a list or lists of ven-
22 dors, customers, or clients that are not easily ob-
23 tained by an individual through means other than
24 the work relationship have adequate legal protection

1 through the use of trade secret protections and non-
2 disclosure agreements.

3 (6) Noncompete agreements broadly restrict
4 employment options for workers in the United States
5 when more narrowly targeted remedies are readily
6 available to employers.

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

10 (8) Employers may retain critical skilled em-
11 ployees while ensuring that disincentives affecting
12 mobility, including noncompete agreements, do not
13 negatively impact the workforce in the United
14 States.

15 SEC. 3. PROHIBITING NONCOMPETE AGREEMENTS.

16 (a) PROHIBITION.—

17 (1) IN GENERAL.—Except as provided in sub-
18 section (b), no person shall enter into, enforce, or at-
19 tempt to enforce a noncompete agreement with any
20 individual who is employed by, or performs work
21 under contract with, such person with respect to the
22 activities of such person in or affecting commerce.

23 (2) EFFECT OF AGREEMENTS.—Except as pro-
24 vided in subsection (b), a noncompete agreement de-

1 scribed in paragraph (1) shall have no force or ef-
2 fect.

3 (b) EXCEPTIONS.—

4 (1) SALE OF GOODWILL OR OWNERSHIP INTER-
5 EST.—

6 (A) IN GENERAL.—A seller of a business
7 entity may enter into an agreement with the
8 buyer to refrain from carrying on a like busi-
9 ness within a specified geographic area de-
10 scribed in subparagraph (C), if the buyer, or
11 any person deriving title to the goodwill of the
12 business entity or an ownership interest in the
13 business entity from the buyer, carries on a like
14 business in such specified geographic area.

15 (B) SENIOR EXECUTIVE OFFICIALS WITH
16 SEVERANCE AGREEMENTS.—

17 (i) IN GENERAL.—Subject to clause
18 (ii), a buyer or seller of a business entity
19 may enter into a noncompete agreement
20 with a senior executive official who has a
21 severance agreement described in clause
22 (iii) that restricts the senior executive offi-
23 cial from performing, within a specified ge-
24 ographic area described in subparagraph
25 (C), any work that is similar to the work

1 that the senior executive official performed
2 for the buyer or seller, if the buyer, or any
3 person deriving title to the goodwill of the
4 business entity or an ownership interest in
5 the business entity from the buyer, carries
6 on a like business in such specified geo-
7 graphic area.

8 (ii) TIME-LIMITED AGREEMENT.—A
9 noncompete agreement described in clause
10 (i) may not restrict the senior executive of-
11 ficial as described in such clause for a pe-
12 riod that is more than one year.

13 (iii) SEVERANCE AGREEMENT.—A
14 severance agreement described in this
15 clause is an agreement between the buyer
16 or seller of a business entity and a senior
17 executive official that—

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

20 (II) requires monetary compensa-
21 tion for the senior executive official in
22 the event of termination of the em-
23 ployment of the senior executive offi-
24 cial at an amount that is not less than
25 the compensation that the senior exec-

1 utive official is or would be reasonably
2 expected to receive from the buyer
3 during the 1-year period following the
4 sale.

5 (C) SPECIFIED GEOGRAPHIC AREA.—A
6 specified geographic area described in this sub-

7 paragraph is a geographic area—

8 (i) that is specified in an agreement
9 described in subparagraph (A), or a non-
10 compete agreement described in subpara-
11 graph (B), regarding a business entity;
12 and

13 (ii) in which such business entity, in-
14 cluding any division or subsidiary of such
15 business entity, conducted business prior
16 to the agreement or noncompete agree-
17 ment.

18 (2) PARTNERSHIP DISSOLUTION OR DISASSO-
19 CIATION.—

20 (A) IN GENERAL.—Any partner of a part-
21 nership may enter into an agreement with any
22 other member of the partnership that, upon the
23 dissolution of the partnership or dissociation of
24 the partner from such partnership, the partner
25 will refrain from carrying on a like business

1 within a specified geographic area described in
2 subparagraph (B), if any other member of the
3 partnership, or any person deriving title to the
4 partnership or the goodwill of the partnership
5 from any other member of the partnership, car-
6 ries on a like business in such specified geo-
7 graphic area.

8 (B) SPECIFIED GEOGRAPHIC AREA.—A
9 specified geographic area described in this sub-
10 paragraph is a geographic area—
11 (i) that is specified in an agreement
12 described in subparagraph (A); and
13 (ii) in which any business of the part-
14 nership has been transacted prior to the
15 agreement.

16 SEC. 4. TRADE SECRETS.

17 Nothing in this Act shall preclude a person from en-
18 tering into an agreement with an individual who is em-
19 ployed by, or performs work under contract with, such per-
20 son with respect to the activities of such person in or af-
21 fecting commerce to not disclose any information (includ-
22 ing after the individual is no longer employed or per-
23 forming work for the person) regarding the person, or the
24 work performed by the individual for the person, that is
25 a trade secret.

1 SEC. 5. NOTICE; PUBLIC AWARENESS CAMPAIGN.

2 (a) NOTICE.—Any person who engages an individual
3 who is employed by, or performs work under contract with,
4 such person with respect to the activities of such person
5 in or affecting commerce shall post and maintain notice
6 of the provisions of this Act—

7 (1) in a conspicuous place on the premises of
8 such person; or

9 (2) in a conspicuous place where notices to em-
10 ployees and applicants for employment are custom-
11 arily posted physically or electronically by such per-
12 son.

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

16 SEC. 6. ENFORCEMENT.

17 (a) FEDERAL TRADE COMMISSION.—

18 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
19 TICES.—A violation of section 3 or 5(a) shall be
20 treated as a violation of a rule defining an unfair or
21 deceptive act or practice prescribed under section
22 18(a)(1)(B) of the Federal Trade Commission Act
23 (15 U.S.C. 57a(a)(1)(B)).

24 (2) POWERS OF COMMISSION.—

25 (A) IN GENERAL.—The Federal Trade
26 Commission shall enforce sections 3 and 5(a) in

1 the same manner, by the same means, and with
2 the same jurisdiction, powers, and duties as
3 though all applicable terms and provisions of
4 the Federal Trade Commission Act (15 U.S.C.
5 41 et seq.) were incorporated into and made a
6 part of this Act.

17 (b) DEPARTMENT OF LABOR.—

18 (1) IN GENERAL.—The Secretary of Labor—

1 by the violation as may be appropriate to effec-
2 tuate the purposes of such sections.

3 (2) STATUTE OF LIMITATIONS.—An action de-
4 scribed in paragraph (1)(B) may not be commenced
5 later than 4 years after the date on which the viola-
6 tion occurred.

7 (3) REGULATIONS.—Not later than 18 months
8 after the date of enactment of this Act, the Sec-
9 retary of Labor, in consultation with the Chair of
10 the Federal Trade Commission, shall issue regula-
11 tions as necessary to carry out this Act, including
12 with respect to the authority of the Secretary of
13 Labor to enforce violations of section 3 or 5(a) in
14 accordance with paragraph (1).

15 (c) STANDARDS FOR DUAL ENFORCEMENT.—Not
16 later than 1 year after the date of enactment of this Act,
17 the Federal Trade Commission and the Secretary of Labor
18 shall, for the purposes of enforcing this Act—

19 (1) develop shared standards for consistent en-
20 forcement; and

21 (2) identify the scope of responsibility of the
22 Federal Trade Commission and such scope of the
23 Secretary of Labor to ensure complementary en-
24 forcement of this Act.

25 (d) REPORTING VIOLATIONS.—

1 (1) IN GENERAL.—The Federal Trade Commis-
2 sion and the Secretary of Labor shall each establish
3 a system to receive complaints by individuals regard-
4 ing alleged violations of section 3.

5 (2) CONFIDENTIALITY.—Except as otherwise
6 required by law, the Federal Trade Commission and
7 the Secretary of Labor may not disclose the identity
8 or identifying information of any individual pro-
9 viding a complaint under paragraph (1), without ex-
10 plicit consent from the individual.

11 (e) PRIVATE RIGHT OF ACTION.—

12 (1) IN GENERAL.—An individual who is ag-
13 grieved by a violation of this Act may bring a civil
14 action in any appropriate district court of the
15 United States.

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

18 (A) any actual damages sustained by the
19 individual as a result of the violation; and
20 (B) in the case of any successful action,
21 the costs of the action and reasonable attor-
22 ney's fees, as determined by the court.

23 (f) ENFORCEMENT BY STATES.—

24 (1) IN GENERAL.—In any case in which the at-
25 torney general of a State has reason to believe that

1 an interest of the residents of the State has been or
2 is threatened or adversely affected by any person
3 who violates any provision of section 3 or 5(a) or
4 any rule promulgated under this Act to carry out
5 such section, the attorney general of the State, as
6 parens patriae, may bring a civil action on behalf of
7 the residents of the State in an appropriate State
8 court or an appropriate district court of the United
9 States to—

10 (A) enjoin any further such violation by
11 the person;

12 (B) compel compliance with section 3 or
13 5(a) or any such rule;

14 (C) obtain a permanent, temporary, or pre-
15 liminary injunction;

16 (D) obtain damages, restitution, or other
17 compensation on behalf of the residents of the
18 State; or

19 (E) obtain any other appropriate equitable
20 relief.

21 (2) PRESERVATION OF STATE POWERS.—Noth-
22 ing in this subsection shall be construed as altering,
23 limiting, or affecting the authority of the attorney
24 general of a State to—

1 (A) bring an action or other regulatory
2 proceeding arising solely under the laws in ef-
3 fect in that State; or

4 (B) exercise the powers conferred on the
5 attorney general by the laws of the State, in-
6 cluding the ability to conduct investigations, ad-
7 minister oaths or affirmations, or compel the
8 attendance of witnesses or the production of
9 documentary or other evidence.

10 (g) ARBITRATION AND CLASS ACTION.—Notwith-
11 standing any other provision of law, no predispute arbitra-
12 tion agreement or predispute joint-action waiver shall be
13 valid or enforceable with respect to any alleged violation
14 of section 3 or 5(a).

15 **SEC. 7. REPORTS.**

16 Not later than 1 year after the date on which the
17 Secretary of Labor issues any regulations under section
18 6(b)(3), the Federal Trade Commission and the Secretary
19 of Labor shall each submit to Congress a report on any
20 actions taken by the Federal Trade Commission or Sec-
21 retary, respectively, to enforce the provisions of this Act.

22 **SEC. 8. DEFINITIONS.**

23 For purposes of this Act:

24 (1) BUSINESS ENTITY.—The term “business
25 entity” means any partnership (including a limited

1 partnership or a limited liability partnership), limited
2 liability company (including a series of a limited
3 liability company formed under the laws of a jurisdiction
4 that recognizes such a series), or corporation.

5 (2) BUYER.—The term “buyer”, with respect to
6 a business entity, means any person who buys the
7 goodwill of the business entity, buys or otherwise ac-
8 quires ownership interest in the business entity, or
9 buys a qualified asset or interest with regard to the
10 business entity.

11 (3) CLASS ACTION.—The term “class action”
12 means a lawsuit in which 1 or more parties seek or
13 obtain class treatment pursuant to rule 23 of the
14 Federal Rules of Civil Procedure or a comparable
15 rule or provision of State law.

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

19 (5) EMPLOY; EMPLOYEE; EMPLOYER.—The
20 terms “employ”, “employee”, and “employer” have
21 the meanings given such terms in section 3 of such
22 Act (29 U.S.C. 203).

23 (6) NONCOMPETE AGREEMENT.—The term
24 “noncompete agreement” means an agreement, en-
25 tered into after the date of enactment of this Act be-

1 tween a person and an individual performing work
2 for the person, that restricts such individual, after
3 the working relationship between the person and in-
4 dividual terminates, from performing—

5 (A) any work for another person for a
6 specified period of time;

7 (B) any work in a specified geographical
8 area; or

9 (C) any work for another person that is
10 similar to such individual's work for the person
11 that is a party to such agreement.

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

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

17 (B) in the case of a business entity that is
18 a limited liability company (including a series of
19 a limited liability company formed under the
20 laws of a jurisdiction that recognizes such a se-
21 ries), any member of such company; or

22 (C) in the case of a business entity that is
23 a corporation, a capital stockholder of the busi-
24 ness entity who owns not less than 5 percent of
25 the capital stock.

1 (8) OWNERSHIP INTEREST.—The term “ownership
2 interest” means—

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

7 (B) in the case of a business entity that is
8 a limited liability company (including a series of
9 a limited liability company formed under the
10 laws of a jurisdiction that recognizes such a se-
11 ries), a membership interest; or

12 (C) in the case of a business entity that is
13 a corporation, not less than 5 percent of the
14 capital stock of the business entity or, as appli-
15 cable, a subsidiary of the business entity.

16 (9) PERSON.—The term “person” has the
17 meaning given the term in section 3 of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 203).

19 (10) PREDISPUTE ARBITRATION AGREEMENT.—
20 The term “predispute arbitration agreement” means
21 an agreement to arbitrate a dispute that has not yet
22 arisen at the time of the making of the agreement.

23 (11) PREDISPUTE JOINT-ACTION WAIVER.—The
24 term “predispute joint-action waiver” means an
25 agreement, whether or not part of a predispute arbi-

1 tration agreement, that would prohibit, or waive the
2 right of, one of the parties to the agreement to par-
3 ticipate in a joint, class, or collective action in a ju-
4 dicial, arbitral, administrative, or other forum, con-
5 cerning a dispute that has not yet arisen at the time
6 of the making of the agreement.

7 (12) QUALIFIED ASSET OR INTEREST.—The
8 term “qualified asset or interest”, with respect to a
9 business entity, means an asset or interest that is—

10 (A) all or substantially all of the operating
11 assets and the goodwill of the business entity;

12 (B) all or substantially all of the operating
13 assets of a division, or a subsidiary, of the busi-
14 ness entity and the goodwill of that division or
15 subsidiary; or

16 (C) all of the ownership interest of any
17 subsidiary of the business entity.

18 (13) SALE.—The term “sale”, with respect to a
19 business entity, means the sale of the goodwill of the
20 business entity, the sale or other disposal of all of
21 the ownership interest of a seller in the business en-
22 tity, or the sale of a qualified asset or interest with
23 regard to the business entity.

24 (14) SELLER.—The term “seller”, with respect
25 to a business entity, means any person who sells the

1 goodwill of the business entity, any owner of the
2 business entity selling or otherwise disposing of all
3 of his or her ownership interest in the business enti-
4 ty, or any owner of the business entity that sells a
5 qualified asset or interest with regard to the busi-
6 ness entity.

7 (15) SENIOR EXECUTIVE OFFICIAL.—The term
8 “senior executive official”, with respect to a sale,
9 means an official who was acquired as an employee
10 of the buyer in such sale through the terms and con-
11 ditions of the sale, and, on the day before the date
12 of such sale—

13 (A) who was employed by the seller in such
14 sale;

15 (B) who was responsible for making or di-
16 recting major decisions of the seller; and

17 (C) whose rate of compensation was in the
18 highest 10 percent of the compensation rates
19 for all employees of the seller.

20 (16) TRADE SECRET.—The term “trade secret”
21 has the meaning given the term in section 1839 of
22 title 18, United States Code.