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.

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 2023”.

SEC. 2. FINDINGS.  

Congress finds the following:

(1) The proliferation of noncompete agreements throughout sectors, occupational categories, and in-
come brackets is contrary to the commitment of Congress to foster 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 in which the workers have honed their skills altogether.

(3) Enforceable noncompete agreements also reduce wages, restrict worker mobility, impinge on the freedom of a worker to maximize labor market potential, and slow the pace of innovation in the United States.

(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 the labor market prospects for workers.

(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 secret protections and non-
disclosure 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 em-
ployees 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 sub-
section (b), no person shall enter into, enforce, or at-
tempt to enforce a noncompete agreement with any
individual who is employed by, or performs work
under contract with, such person with respect to the
activities of such person in or affecting commerce.

(2) Effect of agreements.—Except as pro-
vided 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.—A seller of a business entity 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 of the business entity or an ownership interest in the business entity from the buyer, carries on a like business in such specified geographic area.

(B) Senior executive officials with severance agreements.—

(i) In general.—Subject to clause (ii), a buyer or seller of a business entity may enter into a noncompete agreement with a senior executive official who has a severance agreement described in clause (iii) that restricts the senior executive official from performing, within a specified geographic area described in subparagraph (C), any work that is similar to the work...
that the senior executive official performed
for the buyer or seller, if the buyer, or any
person deriving title to the goodwill of the
business entity or an ownership interest in
the business entity from the buyer, carries
on a like business in such specified geo-
graphic area.

(ii) **Time-limited Agreement.**—A
noncompete agreement described in clause
(i) may not restrict the senior executive of-
ficial as described in such clause for a pe-
riod that is more than one year.

(iii) **Severance Agreement.**—A
severance agreement described in this
clause is an agreement between the buyer
or seller of a business entity and a senior
executive official 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 not less than
the compensation that the senior exec-
utive official is or would be reasonably expected to receive from the buyer during the 1-year period following the sale.

(C) SPECIFIED GEOGRAPHIC AREA.—A specified geographic area described in this subparagraph is a geographic area—

(i) that is specified in an agreement described in subparagraph (A), or a non-compete agreement described in subparagraph (B), regarding a business entity; and

(ii) in which such business entity, including any division or subsidiary of such business entity, conducted business prior to the agreement or noncompete agreement.

(2) PARTNERSHIP DISSOLUTION OR DISSOCIATION.—

(A) IN GENERAL.—Any partner of a partnership may enter into an agreement with any other member of the partnership that, upon the dissolution of the partnership or dissociation of the partner from such partnership, the partner will refrain from carrying on a like business
within a specified geographic area described in subparagraph (B), if any other member of the partnership, or any person deriving title to the partnership or the goodwill of the partnership from any other member of the partnership, carries on a like business in such specified geographic area.

(B) Specified Geographic Area.—A specified geographic area described in this subparagraph is a geographic area—

(i) that is specified in an agreement described in subparagraph (A); and

(ii) in which any business of the partnership has been transacted prior to the agreement.

SEC. 4. TRADE SECRETS.

Nothing in this Act shall preclude a person from entering into an agreement with an individual who is employed by, or performs work under contract with, such person with respect to the activities of such person in or affecting commerce to not disclose any information (including after the individual is no longer employed or performing work for the person) regarding 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 is employed by, or performs work under contract with, such person with respect to the activities of such person in or affecting commerce shall post and maintain notice of the provisions of this Act—

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

(2) in a conspicuous place where notices to employees and applicants for employment are customarily posted physically or electronically by 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 deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(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
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 Fed-
seq.).

(C) AUTHORITY PRESERVED.—Nothing in
this Act shall be construed to limit the author-
ity of the Federal Trade Commission under any
other provision of law.

(b) DEPARTMENT OF LABOR.—

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

(A) shall investigate as the Secretary de-
determines necessary to determine violations of
section 3 or 5(a) by an employer; and

(B) may, subject to paragraph (2), bring
an action in any court of competent jurisdiction
to obtain the legal or equitable relief against an
employer on behalf of an individual aggrieved
by the violation as may be appropriate to effectuate the purposes of such sections.

(2) Statute of Limitations.—An action described in paragraph (1)(B) may not be commenced later than 4 years after the date on which the violation occurred.

(3) Regulations.—Not later than 18 months after the date of enactment of this Act, the Secretary of Labor, in consultation with the Chair of the Federal Trade Commission, shall issue regulations as necessary to carry out this Act, including with respect to the authority of the Secretary of Labor to enforce violations of section 3 or 5(a) in accordance with paragraph (1).

(c) Standards for Dual Enforcement.—Not later than 1 year 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) Reporting Violations.—
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(1) IN GENERAL.—The Federal Trade Commission and the Secretary of Labor shall each establish a system to receive complaints by individuals regarding alleged violations of section 3.

(2) CONFIDENTIALITY.—Except as otherwise required by law, the Federal Trade Commission and the Secretary of Labor may not disclose the identity or identifying information of any individual providing a complaint under paragraph (1), without explicit consent from the individual.

(e) 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, the costs of the action and reasonable attorney’s fees, as determined by the court.

(f) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that
an interest of the residents of the State has been or
is threatened or adversely affected by any person
who violates any provision of section 3 or 5(a) or
any rule promulgated under this Act to carry out
such section, the attorney general of the State, as
parens patriae, may bring a civil action on behalf of
the residents of the State in an appropriate State
court or an appropriate district court of the United
States to—

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

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

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

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

(E) obtain any other appropriate equitable
relief.

(2) P RESERVATION OF STATE POWERS.—Noth-
ing in this subsection shall be construed as altering,
limiting, or affecting the authority of the attorney
general of a State to—
(A) bring an action or other regulatory proceeding arising solely under the laws in effect in that State; or

(B) exercise the powers conferred on the attorney general by the laws of the State, including the ability to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary or other evidence.

(g) ARBITRATION AND CLASS ACTION.—Notwithstanding any other provision of law, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to any alleged violation of section 3 or 5(a).

SEC. 7. REPORTS.

Not later than 1 year after the date on which the Secretary of Labor issues any 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 Federal Trade 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) **BUYER.**—The term “buyer”, with respect to a business entity, means any person who buys the goodwill of the business entity, buys or otherwise acquires ownership interest in the business entity, or buys a qualified asset or interest with regard to the business entity.

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

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

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

(6) **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, after the working relationship between the person and individual terminates, from performing—

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

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

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

(7) 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, a capital stockholder of the business entity who owns not less than 5 percent of the capital stock.
(8) 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, not less than 5 percent of the capital stock of the business entity or, as applicable, a subsidiary of the business entity.

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

(10) Predispute arbitration agreement.—The term “predispute arbitration agreement” means an agreement to arbitrate a dispute that has not yet arisen at the time of the making of the agreement.

(11) Predispute joint-action waiver.—The term “predispute joint-action waiver” means an agreement, whether or not part of a predispute arbit-
tration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

(12) **Qualified Asset or Interest.**—The term “qualified asset or interest”, with respect to a business entity, means an asset or interest that is—

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

(B) 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

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

(13) **Sale.**—The term “sale”, with respect to a business entity, means the sale of the goodwill of the business entity, the sale or other disposal of all of the ownership interest of a seller in the business entity, or the sale of a qualified asset or interest with regard to the business entity.

(14) **Seller.**—The term “seller”, with respect to a business entity, means any person who sells the
goodwill of the business entity, any owner of the business entity selling or otherwise disposing of all of his or her ownership interest in the business entity, or any owner of the business entity that sells a qualified asset or interest with regard to the business entity.

(15) **Senior Executive Official.**—The term “senior executive official”, with respect to a sale, means an official who was acquired as an employee of the buyer in such sale through the terms and conditions of the sale, and, on the day before the date of such sale—

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

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

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

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