

115TH CONGRESS
2D SESSION

H. R. 5631

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2018

Mr. CROWLEY (for himself, Ms. SÁNCHEZ, Mr. POCAN, Mr. ELLISON, Mr. NADLER, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit employers from requiring employees to enter into covenants not to compete, 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 2018”.

6 **SEC. 2. PROHIBITING COVENANTS NOT TO COMPETE.**

7 No employer shall enter into a covenant not to com-
8 pete with any employee of such employer, who in any

1 workweek is engaged in commerce or in the production
 2 of goods for commerce (or is employed in an enterprise
 3 engaged in commerce or in the production of goods for
 4 commerce).

5 **SEC. 3. PRESUMPTION OF ILLEGALITY OF COVENANTS NOT**
 6 **TO COMPETE IN EMPLOYMENT CONTRACTS.**

7 A covenant not to compete contained in an employ-
 8 ment contract made between an employer and an employee
 9 is anticompetitive and violates the antitrust laws unless
 10 the employer establishes by a preponderance of the evi-
 11 dence that the covenant does not have an anticompetitive
 12 effect or that the pro-competitive effects outweigh the
 13 anticompetitive harm.

14 **SEC. 4. PRIVATE RIGHT OF ACTION.**

15 (a) IN GENERAL.—Any person who fails to comply
 16 with section 2 shall be liable to any individual in an
 17 amount equal to the sum of—

18 (1) any actual damages sustained by the indi-
 19 vidual as a result of the failure;

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

22 (3) in the case of any successful action to en-
 23 force any liability under this subsection, the costs of
 24 the action together with reasonable attorney's fees
 25 as determined by the court.

1 (b) VENUE.—Any person may bring a civil action
2 under subsection (a) in any appropriate district court of
3 the United States.

4 **SEC. 5. TRADE SECRETS.**

5 Nothing in this Act shall preclude an employer from
6 entering into an agreement with an employee to not share
7 any information (including after the employee is no longer
8 employed by the employer) regarding the employer or the
9 employment that is a trade secret as defined in section
10 1839 of title 18 of the United States Code.

11 **SEC. 6. DEFINITIONS.**

12 For purposes of this Act:

13 (1) ANTITRUST LAWS.—The term “antitrust
14 laws” shall have the meaning given such term in
15 subsection (a) of the first section of the Clayton Act
16 (15 U.S.C. 12), except that such term shall include
17 section 5 of the Federal Trade Commission Act (15
18 U.S.C. 45) to the extent that such subsection applies
19 to unfair methods of competition.

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

23 (3) COVENANT NOT TO COMPETE.—The term
24 “covenant not to compete” means an agreement be-

1 tween an employer and an employee that restricts
2 such employee from performing—

3 (A) any work for another employer for a
4 specified period of time;

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

7 (C) any work for another employer that is
8 similar to such employee’s work for the em-
9 ployer that is a party to such agreement.

10 (4) EMPLOYEE.—The term “employee” has the
11 meaning given such term in section 3 of the Fair
12 Labor Standards Act of 1938 (29 U.S.C. 203).

13 (5) EMPLOYER.—The term “employer” has the
14 meaning given such term in section 3 of the Fair
15 Labor Standards Act of 1938 (29 U.S.C. 203).

16 (6) STATE.—The term State means any of the
17 several States or the District of Columbia.

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