II

114TH CONGRESS
1ST SESSION

S. 1504

To prohibit employers from requiring low-wage employees to enter into covenants not to compete, to require employers to notify potential employees of any requirement to enter into a covenant not to compete, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2015

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

A BILL

To prohibit employers from requiring low-wage employees to enter into covenants not to compete, to require employers to notify potential employees of any requirement to enter into a covenant not to compete, 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 ‘‘Mobility and Opportunity for Vulnerable Employees Act’’ or the ‘‘MOVE Act’’.

SEC. 2. DEFINITIONS.

In 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—

(A) between an employee and employer that restricts such employee from performing—

(i) any work for another employer for a specified period of time;

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

(iii) work for another employer that is similar to such employee's work for the employer included as a party to the agreement; and

(B) that is entered into after the date of enactment of this Act.

(3) EMPLOYEE; EMPLOYER; ENTERPRISE; ENTERPRISE ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE; GOODS.—The terms "employee", "employer", "enterprise", "enterprise engaged in commerce or in the production of goods for commerce", and "goods" have the mean-

ings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) LIVABLE HOURLY RATE.—The term "livable hourly rate" means—

(A) for the fiscal year of the date of enactment of this Act, the greater of—

(i) $15 per hour; or

(ii) the hourly rate equal to the minimum wage required by the applicable State or local minimum wage law; and

(B) for each succeeding fiscal year, the greater of—

(i) the adjusted amount described in section 3(c); or

(ii) the hourly rate equal to the minimum wage required by the applicable State or local minimum wage law.

(5) LOW-WAGE EMPLOYEE.—The term "low-wage employee"—

(A) means an employee who, excluding any overtime compensation required under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) or under an applicable State law, receives from the applicable employer—

(i) an hourly compensation that is less than the livable hourly rate; or

(ii) an annual compensation that is equal to or less than—

(I) for the fiscal year of the date of enactment of this Act, $31,200 per year; and

(II) for each succeeding fiscal year, the adjusted amount described in section 3(c); and

(B) does not include any salaried employee who receives from the applicable employer compensation that, for 2 consecutive months, is greater than—

(i) for the fiscal year of the date of enactment of this Act, $5,000; and

(ii) for each succeeding fiscal year, the adjusted amount described in such section.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(7) STATE.—The term ''State'' has the meaning given such term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

SEC. 3. PROHIBITING COVENANTS NOT TO COMPETE FOR LOW-WAGE EMPLOYEES.

(a) IN GENERAL.—No employer shall enter into a covenant not to compete with any low-wage 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 low-wage 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.

(c) INFLATION ADJUSTMENT.—

(1) IN GENERAL.—For each fiscal year after the fiscal year of the date of enactment of this Act, the Secretary shall adjust each amount in effect under section 2(4)(B)(i), section 2(5)(A)(ii)(II), or section 2(5)(B)(ii) for inflation by increasing each such amount, as in effect for the preceding fiscal year, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor pub-

lication, as determined by the Bureau of Labor Statistics.

(2) ROUNDING AMOUNTS.—The amounts adjusted under paragraph (1) shall be rounded to the nearest multiple of $0.05.

SEC. 4. DISCLOSURE REQUIREMENT FOR COVENANTS NOT TO COMPETE.

In order for an employer to require an 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) and is not a low-wage employee, to enter into a covenant not to compete, the employer shall, prior to the employment of such employee and at the beginning of the process for hiring such employee, have disclosed to such employee the requirement for entering into such covenant.

SEC. 5. ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall receive, investigate, attempt to resolve, and enforce a complaint of a violation of section 3 or 4 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.—

(1) MAXIMUM FINE.—The Secretary shall impose a civil fine—

(A) with respect to any employer who violates section 3(a) or 4, an amount not to exceed $5,000 for each employee who was the subject of such violation; and

(B) with respect to any employer who violates section 3(b), an amount not to exceed $5,000.

(2) CONSIDERATION.—In determining the amount of any civil fine under this subsection, the Secretary shall consider the appropriateness of the fine to the size of the employer subject to such fine and the gravity of the applicable violation.

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