

116TH CONGRESS
1ST SESSION

S. 124

To amend the Fair Labor Standards Act of 1938 to prevent employers from using non-compete agreements in employment contracts for certain non-exempt employees.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2019

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to prevent employers from using non-compete agreements in employment contracts for certain non-exempt employees.

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 “Freedom to Compete
5 Act”.

6 SEC. 2. LIMITATION ON NON-COMPETE AGREEMENTS.

7 (a) IN GENERAL.—The Fair Labor Standards Act of
8 1938 (29 U.S.C. 201 et seq.) is amended by inserting
9 after section 7 the following:

1 **“SEC. 8. LIMITATION ON NON-COMPETE AGREEMENTS.**

2 “(a) DEFINITION OF NON-COMPETE AGREEMENT.—

3 In this section, the term ‘non-compete agreement’ means
4 an agreement, entered into between an employer and an
5 employee, that restricts such employee from performing,
6 after the employment relationship between the employer
7 and the employee terminates, any of the following:8 “(1) Any work for another employer for a speci-
9 fied period of time.

10 “(2) Any work in a specified geographical area.

11 “(3) Any work for another employer that is
12 similar to such employee’s work for the employer
13 that is a party to such agreement.

14 “(b) IN GENERAL.—

15 “(1) NO ENFORCEMENT OF NON-COMPETE
16 AGREEMENTS.—Any non-compete agreement entered
17 into before the date of enactment of the Freedom to
18 Compete Act shall be void and have no effect. An
19 employer shall not enforce, or threaten to enforce,
20 any non-compete agreement with an employee.21 “(2) NO NEW NON-COMPETE AGREEMENTS.—
22 Beginning on the date of enactment of the Freedom
23 to Compete Act, an employer shall not enter into,
24 extend, or renew any non-compete agreement with
25 an employee.

1 “(3) LIMIT ON APPLICABILITY.—This sub-
2 section shall not apply with respect to any employee
3 described in section 13(a)(1).

4 “(c) RULE OF CONSTRUCTION REGARDING TRADE
5 SECRETS.—Nothing in this section shall preclude an em-
6 ployer from entering into an agreement with an employee
7 to not share any information (including after the employee
8 is no longer employed by the employer) regarding the em-
9 ployer or the employment that is a trade secret, as defined
10 in section 1839 of title 18, United States Code.”.

11 (b) ENFORCEMENT.—

12 (1) PROHIBITED ACT.—Section 15(a) of the
13 Fair Labor Standards Act of 1938 (29 U.S.C.
14 215(a)) is amended—

15 (A) in paragraph (5), by striking the pe-
16 riod at the end and inserting a semicolon; and
17 (B) by adding at the end the following:

18 “(6) to violate any of the provisions of section
19 8.”.

20 (2) PENALTIES.—Section 16 of the Fair Labor
21 Standards Act of 1938 (29 U.S.C. 216) is amend-
22 ed—

23 (A) in subsection (a), by inserting “, ex-
24 cept that a person convicted of a violation of

1 section 15(a)(6) shall not be subject to impris-
2 onment” after “or both”;

3 (B) in subsection (b), by inserting “Any
4 employer who violates the provisions of section
5 8 shall be liable for such legal or equitable relief
6 as may be appropriate to effectuate the pur-
7 poses of such section.” after the third sentence;

8 (C) in subsection (c), by adding at the end
9 the following: “The authority and requirements
10 described in this subsection shall also apply
11 with respect to a violation of section 8, as ap-
12 propriate, and the employer shall be liable for
13 such legal or equitable relief as may be appro-
14 priate to effectuate the purposes of such sec-
15 tion.”; and

16 (D) in subsection (e)(2), by striking “sec-
17 tion 6 or 7, relating to wages,” and inserting
18 “section 6, 7, or 8, relating to wages or non-
19 compete agreements.”.

20 (c) CONFORMING AMENDMENT.—Section 10 of the
21 Fair Labor Standards Act of 1938 (29 U.S.C. 210) is re-
22 pealed.

23 (d) EFFECTIVE DATE.—

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