

The Freedom to Compete Act Senator Marco Rubio (FL)

Background: A non-compete agreement is a contractual agreement between an employer and employee that restricts an employee's ability to work for a competitor after the employment relationship ends. Historically, non-compete agreements were used to prevent an employer's trade secrets from being disclosed to competitors by former employees. However, today's non-compete agreements can be found in employment contracts for entry-level, low-wage workers who do not have access to trade secrets. Non-compete agreements limit employment opportunities for those entry-level, low-wage workers to improve their circumstances and negotiate higher wages, benefits, and training.

The Freedom to Compete Act: The Freedom to Compete Act would amend the Fair Labor Standards Act of 1938 (FLSA) to prevent employers from using non-compete agreements in employment contracts for certain non-exempt employees. Specifically, the Freedom to Compete Act would:

- Apply only to employees who do not qualify for the FLSA's minimum wage and overtime exemption for bona fide executive, administrative, professional and outside sales employees;
- Prohibit an employer from enforcing, or threatening to enforce, a non-compete agreement with a non-exempt employee;
- Prohibit an employer from entering into, extending, or renewing a non-compete agreement with a non-exempt employee; and
- Be enforced by the Department of Labor under the existing FLSA framework for minimum wage and overtime violations.