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

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on ____________

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.

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 “Freedom to Compete Act”.

SEC. 2. LIMITATION ON NON-COMPETE AGREEMENTS.

(a) IN GENERAL.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by inserting after section 7 the following:
"SEC. 8. LIMITATION ON NON-COMPETE AGREEMENTS.

(a) Definition of Non-compete Agreement.—

In this section, the term ‘non-compete agreement’ means an agreement, entered into between an employer and an employee, that restricts such employee from performing, after the employment relationship between the employer and the employee terminates, any of the following:

(1) Any work for another employer for a specified period of time.

(2) Any work in a specified geographical area.

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

(b) In General.—

(1) No Enforcement of Non-compete Agreements.—Any non-compete agreement entered into before the date of enactment of the Freedom to Compete Act shall be void and have no effect. An employer shall not enforce, or threaten to enforce, any non-compete agreement with an employee.

(2) No New Non-compete Agreements.—Beginning on the date of enactment of the Freedom to Compete Act, an employer shall not enter into, extend, or renew any non-compete agreement with an employee.
“(3) Limit on applicability.—This subsection shall not apply with respect to any employee described in section 13(a)(1).

“(c) Rule of construction regarding trade secrets.—Nothing in this section shall preclude an employer from entering into an agreement with an employee to not share any information (including after the employee is no longer employed by the employer) regarding the employer or the employment that is a trade secret, as defined in section 1839 of title 18, United States Code.”

(b) Enforcement.—

(1) Prohibited act.—Section 15(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)) is amended—

(A) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(B) by adding at the end the following:

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

(2) Penalties.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(A) in subsection (a), by inserting “, except that a person convicted of a violation of
section 15(a)(6) shall not be subject to imprisonment” after “or both”;

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

(C) in subsection (c), by adding at the end the following: “The authority and requirements described in this subsection shall also apply with respect to a violation of section 8, as appropriate, and the employer shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of such section.”; and

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

(e) CONFORMING AMENDMENT.—Section 10 of the Fair Labor Standards Act of 1938 (29 U.S.C. 210) is repealed.

(d) EFFECTIVE DATE.—
(1) **IN GENERAL.**—The amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(2) **APPLICABILITY.**—This Act, and the amendments made by this Act, shall apply with respect to any dispute or claim for which proceedings commenced on or after the effective date described in paragraph (1).