



# One Step Up, Two Steps Back: The Noncompete Ban Tug of War Continues

Client Advisories

08.19.2025

By: Thomas A. Muccifori

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The courts and commentators have spent much time during the past year opining on a number of federal legislative and regulatory attempts to outlaw noncompete agreements. Most notably, much was made of the Federal Trade Commission's Noncompete Rule adopted in April 2024. After much ersatz erudition including 26,000 public comments, that Rule was derailed one year ago this month when a federal court in Texas issued a nationwide injunction setting aside the FTC's Noncompete Rule. The Ryan ruling is on appeal but with the new administration, and a new composition of the FTC, the FTC is rethinking what to do with the Noncompete Rule, recently asking the appellate court in Ryan for several 60-day stays of the appeal while it considers what to do.

The answer of what lies ahead may have come last week in the form of President Trump's revocation of President Biden's 2021 Executive Order directing the FTC to regulate noncompetes. With the impetus for the Noncompete Rule now revoked, most pundits believe this is one step forward towards returning the enforceability of noncompetes to a state-by-state analysis as it has been for 200 years.

But wait, nothing in the noncompete space is that simple. Perhaps sensing an opportunity to take a step back into the limelight and fill the void left open by the FTC, Congress has reintroduced a slew of proposed legislative bans on noncompetes, including the reintroduction of the Workforce Mobility Act of 2025, which proposes to ban the use of employment noncompete agreements at the federal level, with some exceptions.

The Workforce Mobility Act of 2025 is a proposed bipartisan federal bill introduced this summer by Democratic Senator Chris Murphy (D. Conn.) and Republican Senator Todd Young (R. Ind.) The text of the bill has just been released and reintroduces virtually the same legislation proposed by these two senators in the Workforce Mobility Act of 2023. The 2025 bill categorically prohibits enforcing or attempting to enforce noncompete agreements with employees or independent contractors concerning activities in or affecting commerce, except for:

- Agreements related to the sale of a business entity (permitting noncompete clauses for sellers and certain senior executive officials with qualifying severance agreements, restricted to one year and requiring specified compensation)
- Agreements between partners upon partnership dissolution or disassociation, limited by geography where the partnership did business.

As in the 2023 bill, nondisclosure agreements for trade secret protection are excluded from the ban as are noncompete agreements entered into before the enactment date. Employers would be required to post notice of the Act to its employees. A violation of the Act would be treated as an unfair or deceptive act or practice prescribed under the Federal Trade Commission Act and provides a private civil federal right of action permitting recovery of “any actual damages sustained by the individual as a result of the violation; and in the case of any successful action, the costs of the action and reasonable attorney’s fees, as determined by the court.” State AGs would also be permitted to pursue violations of the Act.

It remains to be seen whether the Workforce Mobility Act of 2025 will suffer the same fate as its 2023 predecessor or the many prior failed federal noncompete bills, including the “Mobility and Opportunity Vulnerable Employees Act” (“Move Act”), the “Limiting the Ability to Demand Instrumental Restrictions Act,” the “Freedom For Workers To Seek Opportunity Act,” and the “Freedom To Compete Act” just to name some of the many prior proposed federal legislations which have failed to result in a uniform federal law outlawing noncompete agreements. As a result, the validity of noncompetes will continue to be determined by state law. Since so many states treat noncompetes differently, we urge you and your HR team to consult with counsel for an analysis of which state law governs your noncompetes.

Archer’s Trade Secret Protection & Restrictive Covenants Group will continue to monitor and update these developments. If you have any questions, please contact Thomas Muccifori, Chair of Archer’s Trade Secret Protection & Restrictive Covenants Group, at 856-354-3056 or [tmuccifori@archerlaw.com](mailto:tmuccifori@archerlaw.com).

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## Related People



Thomas A. Muccifori

Partner

✉ [tmuccifori@archerlaw.com](mailto:tmuccifori@archerlaw.com)

☎ 856.354.3056

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