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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1938 Session of  
2017

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INTRODUCED BY CALTAGIRONE, DeLUCA, DRISCOLL AND ZIMMERMAN,  
NOVEMBER 27, 2017

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, NOVEMBER 27, 2017

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AN ACT

1 Prohibiting enforcement of covenants not to compete in  
2 employment agreements.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Freedom to  
7 Work Act.

8 Section 2. Declaration of policy.

9 The General Assembly finds and declares as follows:

10 (1) The Commonwealth has a strong interest in applying  
11 its laws and protecting its businesses so they can hire the  
12 employees of their choosing.

13 (2) The Commonwealth has a strong interest in lowering  
14 the unemployment rate and providing individuals every  
15 opportunity to make a living wage and maximize their talents  
16 to provide for their family.

17 (3) The Commonwealth has a strong interest in promoting  
18 increased wages and benefits for working families.

1           (4) The Commonwealth has a strong interest in promoting  
2 innovation, entrepreneurship, business expansion and  
3 improving existing business opportunities to attract the best  
4 qualified worker for open positions.

5           (5) The Commonwealth has a strong interest in promoting  
6 unrestricted trade and mobility of employees in the work  
7 force as well as promoting businesses' abilities to seek the  
8 best qualified candidates for employment.

9           (6) The Commonwealth has a strong interest in workers  
10 with high skill levels to increase their income and benefits.

11           (7) The Commonwealth has a strong interest in attracting  
12 major multinational high-tech companies to this Commonwealth  
13 who plan to invest billions of dollars and hire tens of  
14 thousands of employees in high-paying jobs.

15           (8) The Commonwealth disfavors workers being forced to  
16 decide between staying in jobs they are overqualified for or  
17 leaving the State for better opportunities.

18           (9) The Commonwealth has a strong interest in providing  
19 its residents with the tools needed to stay in Pennsylvania  
20 to live, work and raise families.

21 Section 3. Definitions.

22       The following words and phrases when used in this act shall  
23 have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25       "Covenant not to compete." An agreement between an employer  
26 and employee that is designed to impede the ability of the  
27 employee to seek employment with another employer.

28 Section 4. Prohibition.

29       Except as provided in section 5, a covenant not to compete is  
30 illegal, unenforceable and void as a matter of law. No court may

1 rewrite a covenant not to compete.

2 Section 5. Exceptions.

3 A covenant not to compete that satisfies any of the following  
4 shall not be subject to section 4:

5 (1) A covenant not to compete that is reasonable and  
6 involves an owner of a business that sells the business or  
7 sells the goodwill in the business and that is reasonable.

8 (2) A covenant not to compete that involves a  
9 dissolution or disassociation of a partnership or a limited  
10 liability company.

11 (3) A covenant not to compete that is reasonable, in  
12 effect prior to the effective date of this section and may  
13 not be renewed.

14 Section 6. Attorney fees and damages.

15 An employee shall:

16 (1) Receive an award of attorney fees after prevailing  
17 in a suit against an employer related to the enforcement of a  
18 covenant not to compete.

19 (2) Be entitled to damages, including punitive damages,  
20 after prevailing in a suit against an employer related to the  
21 enforcement of a covenant not to compete.

22 Section 7. Venue, personal jurisdiction and governing law.

23 A dispute arising out of or related to a covenant not to  
24 compete involving a resident of this Commonwealth shall be:

25 (1) Exclusively decided by a State court within this  
26 Commonwealth.

27 (2) Governed by the laws of this Commonwealth.

28 Section 8. Effective date.

29 This act shall take effect immediately.