S-4139.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 6522**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Liias and Fain

AN ACT Relating to protecting workers from work restrictions; adding new sections to chapter 49.44 RCW; creating new sections; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that workforce mobility is important to economic growth and development. Further, the legislature finds that agreements limiting competition or hiring are frequently contracts of adhesion that may be unreasonable.

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 RCW to read as follows:

(1) For a noncompetition agreement to be enforceable, the employer must disclose the terms of the agreement in writing to the prospective employee no later than the time of the acceptance of the offer of employment or, if the agreement is entered into after the commencement of employment, the employer must provide independent consideration for the agreement.

(2) A noncompetition agreement is unreasonable, and void and unenforceable:

(a) If the annual compensation, excluding benefits, of the employee is less than five times the average weekly wage as established under RCW 50.04.355 at the time of entering into the contract.

(b) If the employee is terminated during a probationary period or without just cause, including due to a reduction in force.

(3) A rebuttable presumption is established that a noncompetition agreement is unreasonable and void and unenforceable for any period of time beyond a one year duration. A party to the agreement may rebut the presumption with clear and convincing evidence that the duration beyond one year is reasonably necessary to protect the business or goodwill of the party.

(4) To be enforceable, a noncompetition agreement must be supported by a "garden leave clause" under which the employer agrees to continue to pay the employee wages during the restricted period. The amount of the wages shall be based on the average of wages reported to the employment security department for the four quarters prior to the restricted period, prorated to the employer's pay period. If the employee worked for the employer for less than the entirety of four complete quarters, the average shall be based on the quarters for which the employee worked the entirety of the quarter or quarters. An employer may not restrict an employee from employment while receiving garden leave if the employment is consistent with a reasonable noncompetition agreement that is consistent with this section.

(5) A provision in a contract or agreement signed by an employee who primarily resides and works in the state is void and unenforceable if it requires the employee to adjudicate a noncompetition agreement outside of the state.

(6) A provision in a contract or agreement signed by an employee who primarily resides and works in Washington state is void and unenforceable if it deprives the employee of the substantive protection of Washington law.

(7) Any enforcement or attempted enforcement of a noncompetition agreement that violates this section, or is overly broad or only partially enforceable, affects the public interest and constitutes a per se unfair or deceptive act or practice under chapter 19.86 RCW.

(8) A noncompetition agreement between a performer and a performance space, or a third party scheduling the performer for a performance space, may not restrict the performer from performing in a geographic region for a period longer than three days.

(9) A noncompetition agreement between an entity engaging an independent contractor and an independent contractor is void and unenforceable.

(10) Except as otherwise expressly provided, this section does not revoke, modify, or impede the development of the common law.

(11) This section applies to noncompetition agreements entered into on or after the effective date of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 RCW to read as follows:

An employer may not restrict, restrain, or prohibit an employee working fewer than forty hours per week or earning less than two hundred percent of the applicable state or local minimum wage from having an additional job, supplementing their income by working for another employer, working as an independent contractor, or being self-employed.

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 RCW to read as follows:

The definitions in this section apply throughout sections 1 through 3 of this act unless the context clearly requires otherwise.

(1) "Employee" and "employer" have the same meanings as in RCW 49.17.020.

(2) "Noncompetition agreement" includes every written or oral covenant, agreement, or contract by which an employee is prohibited or restrained from engaging in a lawful profession, trade, or business of any kind. A "noncompetition agreement" does not include: (a) A nonsolicitation agreement; (b) a confidentiality agreement; (c) an agreement prohibiting use or disclosure of trade secrets; or (d) a covenant, agreement, or contract entered into by an employee with an ownership interest in a limited liability company or in a partnership.

(3) "Nonsolicitation agreement" means an agreement between an employer and employee that prohibits solicitation by an employee, upon termination of employment: (a) Of any employee of the employer to leave the employer; or (b) of any customer of the employer to cease doing business with the employer.

NEW SECTION. **Sec.**  The legislature finds that sections 2 and 3 of this act are matters vitally affecting the public interest for the purposes of applying the consumer protection act, chapter 19.86 RCW. Any enforcement or attempted enforcement of a noncompetition agreement that violates section 2 of this act, or is overly broad or only partially enforceable, or any violation of section 3 of this act, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**