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**SENATE BILL 5478**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Liias, Keiser, Conway, Hunt, Pedersen, Kuderer, and McCoy

AN ACT Relating to restraints, including noncompetition covenants, on persons engaging in lawful professions, trades, or businesses; adding a new chapter to Title 49 RCW; and providing an effective date.

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 may be contracts of adhesion that may be unreasonable.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Average annual wage" means the average annual wage as established under RCW 50.04.355.

(2) "Earnings" means the unconditionally promised monetary compensation and educational debt repayment, excluding all other benefits or remuneration, plus the value of the publicly traded stock awarded, annualized and calculated as of the date a noncompetition covenant is signed by both parties. The value of publicly traded stock shall be determined as follows:

(a) For shares fully vested on the grant date, the value is the number of shares multiplied by the market price on the date the covenant is signed; and

(b) For unvested shares, the value is the number of shares multiplied by the market price on the date the covenant is signed, divided by the vesting period and then divided by two.

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

(4) "Franchisor" and "franchisee" have the same meanings as in RCW 19.100.010.

(5) "Noncompetition covenant" includes every written or oral covenant, agreement, or contract by which an employee or independent contractor is prohibited or restrained from engaging in a lawful profession, trade, or business of any kind. A "noncompetition covenant" does not include: (a) A nonsolicitation agreement; (b) a confidentiality agreement; (c) a covenant prohibiting use or disclosure of trade secrets; (d) a covenant entered into by a person selling the goodwill of a business or otherwise disposing of an ownership interest; or (e) a covenant entered into by a franchisee when the franchise sale complies with RCW 19.100.020(1).

(6) "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 or reduce the extent to which it is doing business with the employer.

(7) "Party seeking enforcement" means the named plaintiff or claimant in a proceeding to enforce a noncompetition covenant or the defendant in an action for declaratory relief.

NEW SECTION. **Sec.**  (1) Subject to section 11 of this act, a noncompetition covenant is void and unenforceable against an employee:

(a)(i) Unless the employer discloses the terms of the covenant in writing to the prospective employee no later than the time of the acceptance of the offer of employment and, if the agreement becomes enforceable only at a later date due to changes in the employee's compensation, the employer specifically discloses that the agreement may be enforceable against the employee in the future; or

(ii) If the covenant is entered into after the commencement of employment, unless the employer provides independent consideration for the covenant.

(b) Unless the employee's earnings from the party seeking enforcement exceed three times the average annual wage.

(c) If the employee is terminated as the result of a layoff, unless enforcement of the noncompetition covenant includes compensation equivalent to the employee's base salary at the time of termination for the period of enforcement minus compensation earned through subsequent employment during the period of enforcement.

(2) A court or arbitrator must presume that any noncompetition covenant with a duration exceeding eighteen months after termination of employment is unreasonable and unenforceable. A party seeking enforcement may rebut the presumption by proving by clear and convincing evidence that a duration longer than eighteen months is necessary to protect the party's business or goodwill.

NEW SECTION. **Sec.**  Subject to section 11 of this act:

(1) A noncompetition covenant is void and unenforceable against an independent contractor unless the independent contractor's earnings from the party seeking enforcement exceed four times the average annual wage.

(2) The duration of a noncompetition covenant between a performer and a performance space, or a third party scheduling the performer for a performance space, must not exceed three calendar days.

NEW SECTION. **Sec.**  A provision in a noncompetition covenant signed by an employee or independent contractor who is Washington-based is void and unenforceable:

(1) If the covenant requires the employee or independent contractor to adjudicate a noncompetition covenant outside of this state; and

(2) To the extent it deprives the employee or independent contractor of the protections or benefits of this chapter.

NEW SECTION. **Sec.**  (1) No franchisor may restrict, restrain, or prohibit in any way a franchisee from soliciting or hiring any employee of a franchisee of the same franchisor.

(2) No franchisor may restrict, restrain, or prohibit in any way a franchisee from soliciting or hiring any employee of the franchisor.

NEW SECTION. **Sec.**  An employer may not restrict, restrain, or prohibit an employee earning less than one and one-half times the average annual 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.**  (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for purposes of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce, an unfair method of competition, and an unreasonable restraint of trade for purposes of applying the consumer protection act, chapter 19.86 RCW.

(2) If a court or arbitrator determines that a noncompetition covenant violates this chapter, the violator must pay the aggrieved person the greater of his or her actual damages or a statutory penalty of five thousand dollars, plus reasonable attorneys' fees, expenses, and costs incurred in the proceeding.

(3) If a court or arbitrator reforms, rewrites, modifies, or only partially enforces any noncompetition covenant, the party seeking enforcement must pay the aggrieved person the greater of his or her actual damages or a statutory penalty of five thousand dollars, plus reasonable attorneys' fees, expenses, and costs incurred in the proceeding.

NEW SECTION. **Sec.**  (1)(a) Subject to (b) of this subsection, this chapter displaces conflicting tort, restitutionary, contract, and other laws of this state pertaining to liability for competition by employees or independent contractors with their employers or principals, as appropriate.

(b) This act does not amend or modify chapter 19.108 RCW.

(2) Except as otherwise provided in this chapter, this act does not revoke, modify, or impede the development of the common law.

NEW SECTION. **Sec.**  This act applies to all proceedings commenced on or after the effective date of this section, regardless of when the cause of action arose. To this extent, this act applies retroactively, but in all other respects it applies prospectively.

NEW SECTION. **Sec.**  The state, including an institution of higher education, and a local government may not impose a noncompetition covenant on an employee or independent contractor. Any noncompetition covenant with an employee or independent contractor in effect or entered into on or after the effective date of this section is void and unenforceable.

NEW SECTION. **Sec.**  This chapter is an exercise of the state's police power and shall be construed liberally for the accomplishment of its purposes.

NEW SECTION. **Sec.**  This act takes effect January 1, 2020.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 49 RCW.

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