

HB 1967 - H AMD 316

By Representative Stanford

ADOPTED 03/08/2017

1 Strike everything after the enacting clause and insert the
2 following:

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4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44
5 RCW to read as follows:

6 (1) An unreasonable noncompetition agreement is void and
7 unenforceable. If a court finds a noncompetition agreement
8 unreasonable, it may reform the agreement to make it reasonable and
9 enforceable. If a court reforms an agreement, the party seeking to
10 declare the agreement void shall be deemed the prevailing party for
11 purposes of the agreement and under law.

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

18 (3) The reformation or unenforceability of a noncompetition
19 agreement does not affect the enforceability of any form of
20 confidentiality, nonsolicitation, or other agreement, or any other
21 terms and conditions between the parties, regardless of whether the
22 other agreement or terms or conditions are contained in the same
23 document as a noncompetition agreement.

24 (4) If an employer requires an employee to enter into a
25 noncompetition agreement containing provisions the employer knows
26 are unenforceable, the employee may recover actual damages, together
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1 with statutory damages of five thousand dollars and reasonable
2 attorneys' fees and costs.

3 (5) For purposes of this section:

4 (a) "Confidentiality agreement" means an agreement between an
5 employer and employee that protects proprietary and confidential
6 information including sales information, business strategies and
7 plans, customer information, price information, and trade secrets as
8 defined in RCW 19.108.010.

9 (b) "Employee" means an employee of an employer.

10 (c) "Employer" means any person, firm, corporation, partnership,
11 business trust, legal representative, or other entity that engages
12 in any business, industry, profession, or activity in this state and
13 employs one or more employees, and includes the state, counties,
14 cities, all municipal corporations, public corporations, political
15 subdivisions of the state, and charitable organizations.

16 (d) "Noncompetition agreement" means an agreement between an
17 employer and an employee that is specifically designed to impede the
18 ability of an employee to compete with the employer upon the
19 termination of the employment relationship. A "noncompetition
20 agreement" does not include a confidentiality agreement or a
21 nonsolicitation agreement.

22 (e) "Nonsolicitation agreement" means an agreement between an
23 employer and employee that prohibits solicitation by an employee,
24 upon termination of employment: (i) Of any employee of the employer
25 to leave the employer; or (ii) of any customer of the employer to
26 cease doing business with the employer or to compete with the
27 employer.

28 (6) Except as provided in this section, this section does not
29 restrict the right of an employer from entering into a
30 confidentiality or nonsolicitation agreement, or other terms and
31 conditions of the employment or engagement, with an employee.

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33 NEW SECTION. **Sec. 2.** This act applies to agreements entered
34 into on or after the effective date of this section."

1 Correct the title.

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EFFECT:

- Strikes provisions that:
 - o Make noncompetition agreements void if the employee is a temporary or seasonal employee, or is terminated without just cause or laid off.
 - o Create a rebuttable presumption that agreements restricting competition for more than one year after termination of employment or for employees who are not executives are unreasonable.
 - o Make noncompetition agreements with independent contractors void.
- Provides that the terms of a nondisclosure agreement must be disclosed no later than the time of the acceptance of the offer of employment, rather than the time of the offer.
- Provides that for purposes of liability for requiring an employee to enter into a noncompetition agreement with unenforceable provisions, the employer must know the provisions are unenforceable (deletes "or reasonably should know"). Also provides that costs, in addition to attorneys' fees, may be recovered.
- Strikes intent section.
- Makes consistency change to refer to the "agreement" rather than "contract."

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